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THE
ANNOTATED CORPORATION LAWS
OF
ALL THE STATES

GENERALLY APPLICABLE TO STOCK CORPORATIONS

INCLUDING

Statutes and Constitutional Provisions relating to Receivers, Practice,
Taxation, Trusts and Combinations, Labor, and Crimes
by Corporations and their Officers.

IN THREE VOLUMES.

COMPILED AND EDITED BY

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NORTH CAROLINA.

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SPECIAL LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO 1883.

NORTH CAROLINA.

CONSTITUTION OF NORTH CAROLINA—1868.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE V.

Revenue and Taxation.

Sec. 3. Taxation shall be by uniform rule.

4. State not to lend its credit in aid of any corporation.

ARTICLE VIII.

Corporations Other than Municipal.

Sec. 1. Must be formed under general laws; exception.

2. Debts of corporations, how secured.

3. Corporation defined; shall have right to sue and be sued.

ARTICLE V.

Revenue and Taxation.

§ 3. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property, according to its true value in money. The general assembly may also tax * * * franchises, * * *

See Acts of 1895 and 1897, at pp. 25, 26.

[Exemptions from taxation will never be presumed. *R. R. Co. v. Alsbrook*, 110 N. C. 137; s. c., 14 S. E. Rep. 652.]

§ 4. * * * The general assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.

[A subscription for stock in a corporation and issuing bonds to pay for such stock is a gift of the credit of the State within meaning of above section. *Galloway v. Jenkins*, 63 N. C. 147. As the legislature cannot lend the credit of the State to others for purpose of constructing new railroads, without the sanction of a vote of the

people, so it cannot without such sanction engage in such construction directly. *R. R. Co. v. Holden*, 63 N. C. 411; see, also, *R. R. Co. v. Jenkins*, 65 id. 173. Stockholders in a de facto corporation are liable to creditors to the extent of their stock. *Foundry Co. v. Killian*, 99 N. C. 501; s. c., 6 S. E. Rep. 680.]

ARTICLE VIII.

Corporations other than Municipal.

Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporations cannot be attained under general laws. All general laws and special acts, passed pursuant to this section, may be altered from time to time, or repealed.

Corporation, how formed. § 677.

[All contracts between the sovereign and its citizens, as in bank and railroad charters, are made subject to any change of circumstances that future events may develop. *R. R. Co. v. Reid*, 61 N. C. 155.

Power of legislature to repeal an act which had been passed since the adoption of the Constitution, and accepted by the corporation as an amendment to its charter, discussed. *Clark v. Stanley*, 66 N. C. 60.

The legislature has power, under above section, to alter or repeal all general laws and special acts by which corporations, associations and joint-stock companies are formed. *R. R. Co. v. Rollins*, 82 N. C. 523.

Sections 1 and 3 of article VIII of the Constitution do not create joint-stock associations but are directions to the general assembly not to grant special charters to corporations (which word, by force of section 3, includes joint-stock associations), except where the object can be attained under general law. *Hanstein v. Johnson*, 112 N. C. 253; s. c., 17 S. E. Rep. 161.]

§ 2. Dues from corporations shall be secured by such individual liabilities of the corporations and other means, as may be prescribed by law.

Debts not extinguished by dissolution. § 687. Effect of sale of franchise. § 676. See Act of 1893, at p. 25.

[Unpaid subscriptions to stock constitute a trust fund for the benefit of corporate creditors, and

Corporations, liability of stockholders — Const., Art. viii, § 3.

such creditors have the right to ascertain if the subscription of stock has been paid, and how. *Foundry v. Killian*, 99 N. C. 501; s. c., 6 S. E. Rep. 680.

A subscriber cannot discharge his liability as against creditors for his subscription by substituting shares by another subscriber. *Id.*

Parol evidence will not be received to vary the terms of subscription, or to show a discharge from liability on the part of a stockholder. *Id.* The capital stock and property of a corporation, in case of its insolvency, constitute a fund for the satisfaction of its debts. *Hill v. Lumber Co.*, 113 N. C. 173; s. c., 18 S. E. Rep. 107.

A creditor has no equitable title to assets of a corporation, whether solvent or insolvent, in the hands of its treasurer, and the courts will not interfere with their equitable jurisdiction to enforce payment of a judgment in favor of the creditor against the corporation. *Light Co. v. Electric Co.*, 116 N. C. 112; s. c., 21 S. E. Rep. 951.

As between itself and its creditors, a corporation is simply a debtor and the relation of trustee and cestui que trust does not exist so as to create a lien upon the assets of the corporation in favor

of the creditor in any other sense than applies to an individual debtor. *Id.*

The enactment of statutes regulating manner in which corporation shall equitably discharge the claims of its creditors, or to subject all or any of its property to sale at the instance and for benefit of creditors, is not in conflict with the constitutional provisions in respect to vested rights of the obligations of contracts. *Bass v. Navigation Co.*, 111 N. C. 439; s. c., 16 S. E. Rep. 402.]

§ 3. The term corporation, as used in this article, shall be construed to include all associations and joint-stock companies, having any of the powers and privileges of corporations, not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases as natural persons.

See § 663, subd. 1, and cross-references.

THE CODE OF NORTH CAROLINA—1883.

Volume 1.

CHAPTER X.

The Code of Civil Procedure.

TITLE III. LIMITATIONS OF ACTIONS.

CHAPTER IV.

General Provisions as to Time of Commencing Actions.

Sec. 174. This title not to affect action to enforce payment of bills, etc.

175. Nor actions against directors, etc., of moneyed corporations; limitations in such cases prescribed.

§ 174. This title shall not affect actions to enforce the payment of bills, notes or other evidences of debt, issued or put in circulation as money by moneyed corporations incorporated under the laws of the State.

See § 663, subd. 1, and cross-references.

[Action of judgment creditor not barred in three years after the corporation has ceased to do its regular business. *Heggie v. Assn.*, 107 N. C. 581; s. c., 12 S. E. Rep. 275.]

§ 175. This title shall not affect actions against directors or stockholders of any moneyed corporation, or banking association incorporated under the laws of this State, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

[The liability of stockholders of a bank arises when it refuses to redeem its bills and is notoriously insolvent. The three years statute of limitations begins to run against an action on personal liability of such stockholders from the date the bank suspends specie payments. *Long v. Bank*, 90 N. C. 405.]

TITLE V. OF THE PLACE OF TRIAL.

Sec. 194. Actions against foreign corporations; where and by whom brought.

§ 194. An action against a corporation created by or under the laws of any other State, government, or country, may be brought in the superior court of any county in which the cause of action arose, or in which it usually did business, or in which it has property, or in which the plaintiffs, or either of them, shall reside, in the following cases:

1. By a resident of this State, for any cause of action;

2. By a plaintiff, not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated within this State.

See § 663, subd. 1, and cross-references.

[A defendant is not entitled to have an action removed from State to federal courts, under the acts of congress, unless the latter has original jurisdiction of the action. *Foundry Co. v. Howland*, 99 N. C. 262; s. c., 5 S. E. Rep. 745.

When a proper case for removal is made out, no formal order to transfer the action is necessary. A non-resident, whose petition for removal of suit to United States court was denied on grounds of insufficiency of affidavit, cannot be again heard upon further application for removal. *Herndon v. Ins. Co.*, 108 N. C. 648; s. c., 13 S. E. Rep. 188. The court might have allowed an amendment, if made in apt time. 1d.

The charter of a foreign corporation may be proven in this State by exhibiting a copy duly certified by the secretary of State of the State in which the corporation was created. *Barcello v. Hapgood*, 118 N. C. 714; s. c., 24 S. E. Rep. 124.

A foreign corporation is not a citizen of the State creating it within the protection of article IV, section 2 of the United States Constitution. *Rouge Co. v. Carver*, 118 N. C. 328; s. c., 21 S. E. Rep. 352.]

TITLE VI. OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 217. Summons, how served on corporation.

218. Service by publication.

§ 217. The summons shall be served by delivering a copy thereof in the following cases:

1. If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof: Provided, That any person receiving or collecting moneys within this State for, or on behalf of, any corporation of this or any other State or government, shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein, or when the plaintiff resides in the State, or when such service can be made within the State, personally upon the president, treasurer or secretary thereof.
* * *

See § 663, subd. 1, and cross-references.

[Above section applies alike to criminal and civil cases. *State v. R. R. Co.*, 89 N. C. 584.

A suit against a corporation must be brought in its corporate name, and not against its officers or agents. *Young v. Barden*, 90 N. C. 424.

An attorney for a foreign corporation, who has claims to collect for them in this State, is not a local agent upon whom process may be served. *Moore v. Bank*, 92 N. C. 590.

Summons in an action against a foreign corporation may be served either upon local or general agent. *Jones v. Ins. Co.*, 88 N. C. 499.

Service upon a local agent is sufficient. *Katzenstein v. R. R. Co.*, 78 N. C. 286.

To make service of process on a corporation a copy of same must be left with the officer of the company to whom it is delivered or read as provided by sections 217 and 218 of the Code. *Aaron v. Lumber Co.*, 112 N. C. 189; s. c., 16 S. E. Rep. 1010.

An action against the receiver of a corporation is, in fact, an action against the corporation; hence, under above section, service of summons on a legal agent is service on the receiver. *Farris v. R. R. Co.*, 115 N. C. 600; s. c., 20 S. E. Rep. 167.]

§ 218. Where the person on whom the service of the summons is to be made, cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the court, or to a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom service is to be made, or that he is a proper party to an action relating to real property in this State, such court or judge may grant an order that the service be made by publication of a notice in either of the following cases:

1. Where the defendant is a foreign corporation, and has property within the State, or the cause of action arose therein.

6. (Added by L. 1885, ch. 380.) Where the stockholders of any corporation are deemed to be necessary parties to an action and their names or residence are unknown; or where the names or residence of parties interested in real estate the subject of an action are unknown, the court having jurisdiction may upon affidavit that after due diligence the names and residences of such parties cannot be ascertained, authorize service by publication in one or more newspapers, at the court's discretion, of any summons, notice or order deemed necessary in the premises, with a brief recital of the subject-matter of the suit, and such publication shall be deemed sufficient summons or notice to all parties warned in such publication, or interested in the subject-matter, whether residing in this State or so named or not: Provided, That the name of at least one of the parties to the action and interested in the subject-matter thereof shall be known and be a resident of the State.

7. (Added by L. 1889, ch. 108.) That whenever a summons, notice, order to show cause, order or other process has been duly issued to or against an insurance company or other corporation created by or organized under the laws of this State, and no officer

or agent thereof, upon whom the service of the same can be lawfully made, can, after due diligence, be found within the State, and such facts are made to appear by affidavit to the satisfaction of the superior court clerk of that county in which such summons, notice, order to show cause, order or other process was issued, such clerk shall grant an order that the service of such summons, notice, order to show cause, order or other process may be made by publishing the same, once a week for four weeks, in a newspaper published in said county, or if there be none in said county, then in a newspaper published in the county nearest thereto in which a newspaper is published.

[Where service is made by publication, the requirements of the statute must be strictly complied with. Everything necessary to dispense with personal service must appear by affidavit. *Wheeler v. Cobb*, 75 N. C. 21; *Faulk v. Smith*, 84 id. 501.

The affidavit may be made by an agent or attorney. *Weaver v. Roberts*, 84 N. C. 493.

It seems that the affidavit may be made after the order for publication, provided the order remains in abeyance until the affidavit is filed. *Bank v. Blossom*, 92 N. C. 695.

It is error to discharge an attachment because of the insufficiency of affidavit to obtain service by publication. Defect should be cured by amendment. *Branch v. Frank*, 81 N. C. 180.

It seems that a defective service may be remedied by an order for republication. *Price v. Cox*, 83 N. C. 261.

The court may allow an amendment of a printer's affidavit so as to show day upon which publication of summons began. *Weaver v. Roberts*, supra.]

TITLE VII. THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER VI.

General Rules of Pleading.

Sec. 258. When corporation a party; pleading, how verified.

§ 258. * * * When a corporation is a party, the verification may be made by any officer thereof. * * *

See § 663, subd. 1, and cross-references.

[Failure to verify complaint is fatal. *Cowles v. Hardin*, 79 N. C. 577.

A verification that "facts set forth in the foregoing complaint are true," is sufficient. *Alspaugh v. Winstead*, 79 N. C. 526. But, "to the best of the knowledge, information and belief of the affiant," is not sufficient. *Benedict v. Hall*, 76 N. C. 113; *Cowles v. Hardin*, supra.

A verification to a complaint made by an officer of a corporation need not set forth "his knowledge or the grounds of his belief on the subject, and reasons why it was not made by the party." A corporation acts only through its officers and agents, and such verification is the verification of the corporation itself. *Bank v. Hutchinson*, 87 N. C. 22.

Verification must be by an officer; verification by an agent merely will not suffice. *Banks v. Mfg. Co.*, 108 N. C. 282; s. c., 12 S. E. Rep. 741.]

Injunction; attachment — Code, §§ 343, 347, 349, 362, 363, 369.

TITLE IX. OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

- Ch. 3. Injunction.
4. Attachment.
5. Appointment of receiver.

CHAPTER III.

Injunction.

Sec. 343. Injunction to suspend business of corporation not granted, unless undertaking is given.

§ 343. An injunction to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to the proper officers of the corporation, except where the State is a party to the proceeding, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.

See § 663, subd. 1, and cross-references.

CHAPTER IV.

Attachment.

- Sec. 347. In what actions attachments may issue.
349. What must be shown to procure warrant.
362. Shares of stock of any corporation, liable to attachment.
363. Attachment, how executed on shares of stock.
369. Certificate of defendant's interest to be furnished by officer of corporation.

§ 347. A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in this chapter, when the action is to recover a sum of money only, or damages for one or more of the following causes:

1. Breach of contract, express or implied;
2. Wrongful conversion of personal property;
3. Any other injury to personal property, in consequence of negligence, fraud, or other wrongful act.

§ 349. To entitle the plaintiff to such a warrant, he must show by affidavit to the satisfaction of the court granting the same, as follows:

1. That one of the causes of action specified in section three hundred and forty-seven exists against the defendant. If the action is to recover damages for breach of contract, the defendant must show that the plaintiff is entitled to recover a sum stated

therein, over and above all counterclaims known to him.

2. (As amended by L. 1897, ch. 476, ratified March 9, 1897.) That the defendant is * * * a foreign corporation, * * * or a domestic corporation none of whose officers can be found in the State after due diligence.

[A foreign corporation granted a charter by a city is not subject to attachment as non-resident. *Bernhardt v. Brown*, 26 S. E. Rep. 162.]

§ 362. The rights or shares which the defendant may have in the stock of any association or corporation, together with the interests and profits thereon, and all other property in this State of such defendant, shall be liable to be attached and levied on, and sold to satisfy the judgment and execution.

See § 663, subd. 1, and cross-references.

[The lien of attachment takes effect from its levy. So where in an action to compel a corporation to transfer certain stocks on its books, which plaintiff had purchased at execution sale after it had been attached to answer the judgment, and defendant answered that said stock had been transferred by the judgment debtor before rendition of the judgment, but did not aver that such transfer was before the levy of the attachment: it was held, that the answer did not raise an issue, or set up substantial defense. *Morehead v. R. R. Co.*, 96 N. C. 362; s. e., 2 S. E. Rep. 247.]

§ 363. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, shall be made, by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or with the secretary, cashier or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

[Whether purchasers of shares of stock, at a sale under an attachment against a party who appears on stock-books to be the owner, gets a title superior to that of a transferee from such apparent owner, query. *Morehead v. R. R. Co.*, 96 N. C. 362; s. e., 2 S. E. Rep. 247.]

§ 369. Whenever the sheriff or other lawful officer with a warrant of attachment or execution, shall apply to any officer mentioned in section three hundred and sixty-three, or to any debtor or individual, for the purpose of attaching or levying on the property of the defendant in such warrant, such officer, debtor or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in such association or corporation, with any dividend or any income thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of, or debt owing to the defendant. If such

Receivers; actions to annul, etc.—Code, §§ 379, 603–605.

officer, debtor or individual refuse to do so, he may be required by the court or judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

CHAPTER V.

Appointment of Receiver.

Sec. 379. Receiver may be appointed for a corporation.

§ 379. A judge of the superior court having authority to grant restraining orders and injunctions, as prescribed in title nine, sub chapter three of this chapter, shall have the like jurisdiction in appointing receivers, and all motions to show cause shall be returnable as is provided for injunctions.

A receiver may be appointed —

(4.) In cases provided in said chapter and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and in like cases, of the property within this State of foreign corporations. Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the judge appointing them, not exceeding five per cent. on the amount received and disbursed by them.

See Act of 1885, at p. 24. § 663, subd. 1, and cross-references.

[Property in hands of receiver is not subject to execution. *Skinner v. Maxwell*, 68 N. C. 400.

Where there is a contest as to rights of different creditors to the assets of a dissolved corporation, there being no corporate officers, a receiver should be appointed. *Dobson v. Simonton*, 78 N. C. 63.

Where a corporation has become extinct by legislative enactment, and its powers and property transferred to new corporation substituted for it, the courts have no power, on an ex parte application, to appoint a receiver of the assets of the defunct corporation. *Young v. Rollins*, 85 N. C. 485.

An order appointing a receiver of an extinct corporation cannot properly be made except in a proceeding to which its successor or substitute is a party. The organization of a new corporation at once dissolves the old one. If there are creditors of the dissolved corporation under these circumstances, they may cause property of defunct corporation to be applied to their debts by means of a receiver. *Marshall v. R. R. Co.*, 92 N. C. 322.

A receiver of an insolvent corporation, appointed by United States circuit court, cannot bring an action in the State courts, in his own name, to recover the property of such corporation. Such action should be in name of real owner. *Battle v. Davis*, 66 N. C. 252.

A receiver of a dissolved corporation can bring suit against its debtors in his own name or in the corporate name. *Gray v. Lewis*, 94 N. C. 392.

The defendant corporation could not settle with its members by the application of assets to the retirement or redemption of the stock of the shareholders until it had first settled and discharged all its liabilities, and any agreement among the shareholders looking to such arrangement will be void as to creditors. *Heggie v. Aesn.*, 107 N. C. 581; s. c., 12 S. E. Rep. 275.]

TITLE XV. ACTIONS IN PARTICULAR CASES.

CHAPTER I.

Actions in Place of Scire Facias, Quo Warranto, and of Informations in the Nature of Quo Warranto.

Sec. 603. Scire facias and quo warranto abolished, and this chapter substituted.

604. Action may be brought by attorney-general to vacate a charter, by direction of the legislature.

605. Action to annul a corporation, when and how brought by the attorney-general, by leave of the supreme court.

606. Leave, how obtained.

607. Action upon information or complaint.

608. When attorney-general to grant leave to private relator to bring action.

609. Complaint and arrest of defendant, in action for usurping an office.

610. Judgment in such actions.

611. Assumption of office by relator, when judgment in his favor.

612. Proceedings against defendant on refusal to deliver books or papers.

613. Damages, how recovered.

614. One action against several persons, claiming office or franchise.

615. Penalty for usurping office or franchise, how awarded.

617. Judgment of forfeiture against a corporation.

618. Costs against corporation or persons claiming to be such, how collected.

619. Restraining corporation and appointment of receiver.

620. Copy of judgment-roll, where to be filed.

§ 603. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished; and the remedies obtainable in those forms may be obtained by civil actions under this sub-chapter.

See § 663, subd. 1, and cross-references.

§ 604. (As amended March 11, 1889.) An action may be brought by the attorney-general, in the name of the State, whenever the legislature shall so direct against a corporation for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, or its letters of incorporation, on the ground that such act or renewal of such letters of incorporation was procured upon some fraudulent suggestion, or concealment of a material fact, by the person incorporated, or by some of them, or with their knowledge and consent.

§ 605. (As amended March 11, 1889.) An action may be brought by the attorney-general in the name of the State, on leave granted by the supreme court or a justice thereof, for the purpose of vacating the charter or letters of incorporation or annulling the existence of a corporation, other than municipal, whenever such corporation shall —

1. Offend against the act or acts, creating, altering, or renewing such corporation or

Action to annul corporate existence, etc.—Code, §§ 606-615.

against its letters or plans of incorporation; or.

2. Violate any law by which such corporation shall have forfeited its charter or letters of incorporation by abuse of its powers; or.

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its power; or.

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or.

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law; or

6. For non-user of its powers for two or more years consecutively; or

7. For insolvency, manifested by the return of an execution unsatisfied, upon a judgment against the company docketed in the superior court of the county where it has its entry or principal place of business.

And it shall be the duty of the attorney-general, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted, to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby.

See §§ 686, 688, 694.

[In a proceeding to annul a charter, court may permit a corporate creditor to interplead. *Atty.-Gen. v. Simonton*, 78 N. C. 57.

A corporation can endure no longer than time limited by its charter, and no judicial proceedings are necessary to declare a forfeiture at end of such time; but if for any other cause of forfeiture, a direct proceeding must be instituted by the State, and cannot be taken advantage of collaterally. *Ashtville Div. v. Ashton*, 92 N. C. 579.]

§ 606. Leave to bring the action may be granted upon the application of the attorney-general; and the court or justice may, at discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

§ 607. An action may be brought by the attorney-general in the name of the State, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State, or any office in a corporation created by the authority of this State; or

3. When any association or number of persons shall act within this State as a corporation, without being duly incorporated.

§ 608. When application shall be made to the attorney-general by a private relator to

bring such an action, he shall grant leave for the same to be brought in the name of the State, upon the relation of such applicant, upon his tendering to the attorney-general satisfactory security to indemnify the State against all costs and expenses, which may accrue in consequence of the bringing of such action.

§ 609. Whenever such action shall be brought against a person for usurping an office, the attorney-general, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with the statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order shall be granted by a judge of the superior court for the arrest of such defendant, and holding him to bail; and thereupon he shall be arrested and held to bail in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

§ 610. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

§ 611. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he shall have been excluded.

§ 612. If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be guilty of a misdemeanor, and the same proceedings shall be had, and with the same effect, to compel a delivery of such books and papers as are prescribed by law.

§ 613. If judgment be rendered, upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

§ 614. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 615. When the defendant, whether a natural person or a corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege,

judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding two thousand dollars, which fine, when collected, shall be paid into the treasury of the State.

[Where the claim of a defendant is bona fide and without criminal intent, the court is averse to imposing any fine. *Nichols v. McKee*, 68 N. C. 429.]

§ 616. All actions to try the title, or right to any office, State, county or municipal, shall stand for trial at the return term of the summons, if a copy of the complaint shall have been served with the summons, at least ten days before the return day thereof; and it shall be the duty of the judges to expedite the trial of such actions, and to give them precedence over all actions, civil or criminal. But it shall be unlawful to appropriate any public funds to the payment of counsel fees in any such action.

§ 617. If it shall be adjudged that a corporation against which an action shall have been brought, has forfeited by neglect, abuse, or surrender, its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

See § 667, and cross-references.

§ 618. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

§ 619. When such judgment shall be rendered against a corporation, the court shall have the power to restrain the corporation, to appoint a receiver of its property, and to take an account, and make a distribution thereof among its creditors; and it shall be the duty of the attorney-general immediately after the rendition of such judgment to institute proceedings for that purpose.

See § 668, and cross-references.

[Where there is a contest as to rights of different creditors to assets of dissolved corporation, there being no corporate officers, a receiver should be appointed. *Dobson v. Simonton*, 78 N. C. 63.]

Where powers and franchises of one corporation are transferred by the legislature to another corporation, an order binding a receiver of the defunct corporation cannot properly be made except in a proceeding to which its successors or substitute is a party. *Youngs v. Rollins*, 85 N. C. 485.]

§ 620. Upon the rendition of such judgment against a corporation, it shall be the duty of the attorney-general to cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State.

CHAPTER XVI.

Corporations.

- Sec. 663. General powers of corporations.
 664. By-laws to determine the manner of calling and conducting meetings, etc.
 665. First meeting, how notified when not provided for specially.
 666. Land may be held and conveyed.
 667. Corporations to continue three years after charter expires, to close their concerns.
 668. When corporations expire, etc., receivers or trustees appointed to settle their affairs; their powers.
 669. Jurisdiction over receivers or trustees.
 670. Receivers to pay debts and distribute surplus.
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 672. Executions levied on personal property; property may be sold independent of the franchise and real property belonging to such corporation.
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- Sec. 696. Tax on bill for incorporation presented to general assembly.
697. Sales under deeds of trust.
698. Corporation created by sale shall succeed to rights, etc., and when it expires, property to go to pay debts, etc.
699. Tax collectors to lay upon and take into possession property of corporations, etc., whether in hands of receivers or not.
700. Not necessary to obtain order of court for the payment of tax, if property in hands of receiver.
701. This chapter to apply to all corporations, unless otherwise declared herein, or in the chapter on railroads and telegraphs.

§ 663. All corporations shall, where no other provision is specially made, be capable in their corporate name

1. To sue and be sued, appear, prosecute and defend to final judgment and execution, in any courts or elsewhere;

See Const., art. VIII, § 3. Limitations of actions. §§ 174-175. Place of trial. § 194. Summons, how served. §§ 217-218. Pleading, how verified. § 258. Injunction. § 313. Attachment. §§ 362-369. Receiver. § 379. Actions in nature of quo warranto. §§ 603-620. Executions to issue. § 671. Evidence of incorporation. § 682. Corporation restrained from exercising power not granted. § 686. Summons, how served in special proceeding. § 695. Concerning receivers. Act of 1885, at p. 24. Charters, how amended. Act of 1893, at p. 25.

[A corporation can only sue and be sued in its corporate name, unless the act of incorporation enables it to come into court in the name of any other person, as its president, cashier, etc. *Mauney v. Mfg. Co.*, 4 Ired. Eq. 195.

An allegation that a corporation was not properly organized, and, therefore, had no authority to collect a subscription made to its capital stock, is a question that cannot be tried in a court of law. *Thompson v. Guion*, 5 Jones' Eq. 113.

In an action against a subscriber to stock, held, that the existence of a president and other officer, acting for and in behalf of the corporation, and a charter authorizing the appointment of such officers were sufficient to establish its organization as against defendant and all others dealing with them in their corporate capacity. *R. R. Co. v. Thompson*, 7 Jones' L. R. 387.

Corporation may be sued for contract price of articles ordered by it and refused. *Marshall v. Bank*, 108 N. C. 639; s. c., 13 S. E. Rep. 182.

An action may be maintained against a corporation for torts, e. g., slander, libel, and malicious prosecution, however foreign they may be to the objects of its creation and beyond its granted powers. *Hussey v. R. R. Co.*, 48 N. C. 34; s. c., 3 S. E. Rep. 323. And its liability extends to tortious acts of its servants done in its service. *Id.* And the corporation and such servant may be joined in the action. *Id.* And it is no defense to an action of tort that the tort resulted from an act that was *nitra vires*. *Gruber v. R. R. Co.*, 92 N. C. 1.

A corporation represents the shareholders in defending actions involving their rights and obligations, and a judgment against it, in the absence of fraud, binds them. *Heggle v. Assn.*, 107 N. C. 581; s. c., 12 S. E. Rep. 275.

Individual stockholders in their own name are not the proper parties to assert the rights of a corporation; action should be brought by and for the corporation itself. *Moore v. Mining Co.*, 164 N. C. 334; s. c., 10 S. E. Rep. 679.

A stockholder has the right to inspect books of

corporation in order to obtain information upon which to frame his complaint. *Holt v. Warehouse*, 116 N. C. 480; s. c., 21 S. E. Rep. 919.

To avail itself of a statute, it is necessary that corporation shall specifically plead and rely upon it. *Curris v. Piedmont*, 109 N. C. 401.

The existence of a railroad corporation cannot be attacked or questioned in an action brought by it to condemn land for its purposes. *R. R. Co. v. Lumber Co.*, 114 N. C. 690; s. c., 19 S. E. Rep. 616.

Where the defense of usury was not set up by defendant corporation to defeat an action by the plaintiff, its creditor, held, that the assignee, and shareholder, interested in the administration of the assets in preventing an attempted priority given to the plaintiff, is estopped to impeach or to show such judgment was void on such ground. *Heggle v. Assn.*, supra.

A plea of not guilty to an indictment against a corporation is an admission of its corporate existence. *State v. R. R. Co.*, 95 N. C. 602.

One contracting with a corporation, held estopped to deny its corporate existence. *Fayetteville Water Works v. Tillinghast*, 25 S. E. Rep. 51.

That the charter of an insurance company provides that it shall be sued only in the State of its domicile is no defense to an action by an administrator of a decedent in another State. *Shields v. Union, etc., Life Ins. Co.*, 25 S. E. Rep. 951.

To what judgment creditor is entitled in an action against a corporation which has disposed of property after plaintiff's claim accrued. *Langston v. Greenville L. & L. Co.*, 26 S. E. Rep. 614.]

2. To have a common seal, which they may alter at pleasure;

[It seems that a corporation may adopt as its seal the individual seals of its officers affixed to a deed of the corporation when it has no seal of its own. *Taylor v. Heggle*, 83 N. C. 214.]

3. To elect, in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation and define their duties and obligations;

See § 661.

[When a corporation is bound by acts of its agents. *Neaves v. Mining Co.*, 90 N. C. 412.

A contract made by a corporate officer and ratified by the corporation becomes the contract of the latter. *Greenleaf v. R. R. Co.*, 91 N. C. 23.

A corporation is not bound by the acts or chargeable with the knowledge of one of its officers or agents in respect to a transaction in which such officer or agent is acting in his own behalf, and does not act with any official or representative capacity. *Bank v. Burgwyn*, 110 N. C. 267; s. c., 14 S. E. Rep. 623.

Officers of a corporation, from the highest to the lowest, are only the agents thereof, and their acts and contracts are binding on their principal only when within the scope of their authority, expressed or implied. *Rumbough v. Improv. Co.*, 112 N. C. 754; s. c., 17 S. E. Rep. 536.

The scope of the authority of one officer of a corporation, as to past transactions at least, cannot be proved by the unsworn declaration of another officer or agent. *Id.*

In an action on a draft drawn on an agent of a corporation and accepted by him in the name of the corporation, the declarations of the president, made after the alleged acceptance, were inadmissible to show the agent's authority to bind the company. *Id.*

A corporation is liable on a contract made by its general manager within scope of its business. *Clowe v. Product Co.*, 114 N. C. 304; s. c., 19 S. E. Rep. 153.

Acts of corporate officers purporting to be done by virtue of their offices are taken to be cor-

Corporate powers; by-laws; first meeting — Code, §§ 664-666.

rect and are prima facie valid and true. *Barcello v. Hapgood*, 118 N. C. 714; s. c., 24 S. E. Rep. 124.]

4. And to make by-laws and regulations, consistent with the laws of the State, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

Manner of calling meetings, determined by. § 664.

[If an act is to be done by an incorporated body, the law, resolution or ordinance authorizing it to be done is valid if passed by a majority of those present at a legal meeting. *Cotton v. Comrs.*, 108 N. C. 678.]

[**Powers in general.**—If a corporation exercises its powers recklessly and without due regard to the interests of others, the company will be liable for resultant injury. *Salisbury v. R. R. Co.*, 91 N. C. 490.]

It is no defense to an action of tort, that the tort resulted from an act which was ultra vires. *Gruber v. R. R. Co.*, 92 N. C. 1.

A corporation empowered to cut lumber and ship same to market can, in providing means of transportation for its own products, incidentally carry goods for others. *Id.*

A corporation can make a contract with one of its own members. *State v. Lockyear*, 95 N. C. 633.

Although a corporation not authorized to build and operate a railroad would be acting ultra vires to engage in such business, yet it may render itself liable for "railroad supplies" purchased and used by it, especially where the seller had no notice that the goods were to be used for any other purposes than regular business of the company. *Id.*

Corporations possess by implication such powers as are essential to the exercise of the powers expressly conferred and necessary to attain the main objects for which they were formed. *Barcello v. Hapgood*, 118 N. C. 712; s. c., 24 S. E. Rep. 124. Therefore, a corporation created to mine and sell ores may buy and sell estate necessary for such business. *Id.*

Question whether a corporation has power to hold land can be raised as against any corporation exhibiting title to realty only by a proceeding authorized by the State. *Id.*

A stockholder can deal with the corporation as with a third person. *Langston v. Greenville L. & I. Co.*, 26 S. E. Rep. 644.

One contracting with a corporation is estopped to deny its corporate existence. *Fayetteville Water Works v. Tillinghast*, 25 S. E. Rep. 51.]

§ 664. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting all meetings; the number of members that shall constitute a quorum; the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the non-payment of assessments; and the tenure of office of the several officers; and the manner in which vacancies in any of the offices shall be filled till a regular election, and they may annex suitable penalties to such by-laws, not exceeding in any case the sum of twenty dollars for any one offense: Provided, That no such by-law shall be made by any corporation repugnant to any provision of its charter: And provided further, That if the chief or other authorized officer

of any company shall issue any certificate of stock in any other way or to any other person than as provided by the by-laws of said company, the officer issuing such certificate shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court.

Corporation may make by-laws. § 663, subd. 4. Calling first meeting. § 665.

[When the act creating a corporation is silent on the subject, a majority of the officers or persons authorized to act constitute the legal body and a majority can exercise the powers delegated. *Cotton v. Comrs.*, 108 N. C. 678; s. c., 13 S. E. Rep. 271.]

§ 665. The first meeting of all corporations, unless otherwise provided for in their acts of incorporation, shall be called by a notice signed by any one or more of the persons named in the act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice, ten days at least before the meeting, shall be delivered to each member or published in some newspaper printed nearest to the proposed place of meeting.

Manner of calling meetings determined by by-laws. § 664.

§ 660. (As amended February 25, 1893.) Every corporation may hold lands to an amount authorized by law, and may convey the same. But no corporation formed under this chapter, except mining and manufacturing companies, and companies organized for the purpose of sheep and wool growing, and companies for supplying the cities and towns of the State with water, shall have power to hold at the same time more than three hundred acres of land in fee-simple, or for a longer term than thirty years.

Property of corporation not exempt on account of mortgagees. § 1255. Real property of corporation. § 672. How corporation may convey by deed. § 685. When land may be forfeited to State. § 690. Lands, how sold. § 692. Corporation holding over 300 acres. § 693.

[Although existence of a corporation be limited to a certain number of years, yet it is capable of holding estates in fee. *Asheville v. Aston*, 92 N. C. 578.]

Where corporation is empowered to purchase land for certain purposes, the presumption is that any land purchased by it was acquired for purposes authorized. *Mallett v. Simpson*, 94 N. C. 37. At common law a corporation has power to acquire and hold real estate in fee. *Id.* Power of a corporation to hold land acquired by it can only be questioned in a direct proceeding by the State, instituted for that purpose. *Id.*

The assent of a majority of stockholders expressed elsewhere than at a stockholders' meeting does not bind the company. *Duke v. Markham*, 105 N. C. 131; s. c., 10 S. E. Rep. 1003.

While the legislature has no power to authorize the condemnation of private property for the use of private corporations, nevertheless, where corporations, otherwise private, are qualified with powers and charged with duties which are in their

Continuance after dissolution; appointment of receivers — Code, §§ 667-670.

nature public, they become quasi public corporations, and may, with legislative permission, exercise the right of eminent domain. *Bass v. Navigation Co.*, 111 N. C. 439; s. c., 16 S. E. Rep. 402.

A deed to a corporation is valid, though there is a mistake or omission in the title, if it can be shown what corporation was intended. *Simmons v. Allison*, 118 N. C. 763; s. c., 24 S. E. Rep. 716.]

§ 667. All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations may have been established.

Judgment for forfeiture. § 617; see note to § 668. Dissolution not to extinguish debts. § 687.

[Sections 667 and 668 oust the former equity jurisdiction for the appointment of a receiver, at the instance of creditors, to wind up the corporate affairs. *Von Glahn v. De Rosset*, 81 N. C. 467. The statutory remedy is exclusive of all others, and must be pursued within the three years, and a failure to proceed within that period will be a complete defense, not only to the corporation, but to the stockholders. Id. Judgments against a corporation rendered upon process issued after it ceased to exist are of no validity, and may be impeached by a party intrusted with the administration of its assets, which must be had under above section. *Dobson v. Simonton*, 86 N. C. 492. Above section relates to corporations whose charters shall expire by limitation, or be annulled by forfeiture, or otherwise. *Heggie v. Assn.*, 107 N. C. 581; s. c., 12 N. E. Rep. 275.]

Where an old corporation is, by a transfer of its property, franchises and privileges, merged into a new corporation with same stockholders and directors as the old one, which assumes all the liabilities of the old, section 667 does not apply so as to make the old corporation a necessary party to an action against the new. *Friedenwald v. Tobacco Works*, 117 N. C. 544; s. c., 23 S. E. Rep. 490. The effect of such merger is to create a novation so far as creditors of old company are concerned and to substitute the new one as debtor. Id.

Persons who subscribed to the stock of a proposed corporation and on failure of the company to take any steps to incorporate, withdrew and received back the money they had paid in, were at most dormant partners of a business carried on by some members of the proposed corporation in its corporate name, and are not liable for debts contracted after their withdrawal. *Gorman v. Davis Co.*, 118 N. C. 370; s. c., 24 S. E. Rep. 770.]

§ 668. When the charter of any corporation shall expire or be annulled as provided in the preceding section, or the corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights, either for non-user or abuse, or any other cause, the judge of the superior court having jurisdiction of the appointment of receivers as provided in chapter ten, on application of any creditor of such corporation, or of any stockholder or member thereof at any time within said three years, or if for insolvency

within three years from the time of said insolvency, may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or in the name of such receivers or trustees, all such actions as may be necessary or proper for the purpose aforesaid; and to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receivers may be continued beyond the said three years, and as long as the court shall think necessary for the purposes aforesaid.

Appointment of receiver. § 379. Same. § 619. Same. Act of 1885, at p. 24; see note, § 667.

[Unless legislature has otherwise directed, the real property of a dissolved corporation reverts to the donor or grantor, the personal property goes to the sovereign; but choses in action become extinct. *Fox v. Horah*, 1 Fred. Eq. 358.]

An order appointing a receiver of an extinct corporation cannot properly be made except in a proceeding to which its successor or substitute is a party. *Young v. Rollins*, 85 N. C. 485.

Action for dissolution of a corporation. See *Atty.-Gen. v. Nav. Co.*, 84 N. C. 705.

Orders drawn in favor of the shareholders after defendant had ceased to do its regular business as a corporation are not equitable assignments, or equitable execution or supplemental proceedings to subject stock so drawn upon to the payment of the debt thereby created, nor do such orders so drawn constitute the owner of them a bona fide creditor. *Heggie v. Assn.*, 107 N. C. 581; s. c., 12 S. E. Rep. 275.

A corporation has the right to prefer a just debt due to one of its officers to those of other creditors. *Blalock v. Mfg. Co.*, 110 N. C. 49; s. c., 14 S. E. Rep. 501.]

§ 669. The court or judge shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and make such orders, injunctions and decrees therein as justice and equity shall require.

Jurisdiction of court. § 379.

§ 670. The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor; and if not, they shall distribute the same ratably among all the creditors, who shall prove their debts in the manner that shall be directed by any order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

See § 668, and cross references.

[Receiver of a corporation cannot exercise the power of sale in a mortgage to it. *Strauss v. Loan Assn.*, 117 N. C. 308; s. c., 23 S. E. Rep. 450.]

Executions against corporations; sale of franchise — Code, §§ 671-677.

The receiver can proceed to collect in the assets and transact business and defend suits, after the corporation has ceased to exist by the expiration of its charter. *Asheville v. Aston*, 92 N. C. 578.

He can bring suit against a corporate debtor, either in his own name or that of the corporation. *Gray v. Lewis*, 94 N. C. 392.]

§ 671. If any judgment or decree shall be rendered against a corporation, the plaintiff may sue out such executions against the property of a corporation as is provided in this Code to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands and tenements of such corporations; and if the judgment or decree be against any corporation authorized to receive fare or tolls, the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of fare or tolls, and also all other corporate property, real and personal, may be taken on execution and sold under the rules regulating the sale of real estate.

See § 663, subd. 1, and cross-references. Right of toll. § 674. Corporation created by sale. § 698.

[The real estate acquired by a corporation in exercise of right of eminent domain, and necessary for uses in which the public is concerned, cannot be sold under execution apart from the franchise and its incidents, so as to give purchaser a title to the property divested of all the duties and obligations assumed by the company. *Gooch v. McGee*, 83 N. C. 59; see, also, *Atty.-Gen. v. Nav. Co.*, 84 id. 705.

A judgment, whether just or unjust, if regularly taken in a court of competent jurisdiction, may be enforced by execution or proceedings supplementary thereto, and cannot be attacked by any member of defendant corporation, or its creditors, except for fraud or collusion. *Heggie v. Assn.*, 107 N. C. 581; s. e., 12 S. E. Rep. 275.

Where there is a valid judgment against defendant corporation, from which no appeal was ever perfected, court will not consider whether plaintiff is confined in his remedy to particular assets, such as certain equities in land held by it. The judgment affects all the assets until it is impeached for fraud or collusion. Id.]

§ 672. When an execution has been sued out and levied upon the personal property of a corporation, such personal property may be sold, and the title to such property shall pass to the purchaser at said sale, independent of the franchise and real estate of such corporation.

See § 666, and cross-references. Right of fares and tolls conveyed. § 674. Remedies of purchaser. § 675. Shares in corporation personal property. § 689. Sale under deed of trust. § 697.

[See *Atty.-Gen. v. Nav. Co.*, 84 N. C. 705.]

§ 673. In the sale of the franchise of any corporation, the person who shall satisfy the execution with all costs thereon, or who shall agree to take such franchise for the shortest period of time, and to receive dur-

ing that time all such fare and toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

See note to § 671.

[A sale of a franchise, under above section, must be predicated on a bid for the entire sum demanded in the execution, with costs, and the only competition allowed is as to who will take the income for the shortest length of time, paying the whole debt and costs, demanded in the execution. *Taylor v. Jerkins*, 6 Jones' L. R. 316.]

§ 674. The officer making sale shall by deed convey to the purchaser all the immunities and privileges which by law belong to the corporation, so far as relates to the right of demanding fare and toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the corporate real property connected with the franchise belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive to his own use all the fare and toll which may accrue within the time limited by the term of his purchase in the same manner and under the same regulations as such corporation was before authorized to demand and receive the same.

See note to §§ 671-672.

§ 675. Any person who may have purchased, or shall, under this chapter, hereafter purchase the franchise of any corporation, and the assignee of such person may recover in such action as the corporation might have brought, any penalties imposed by law for an injury to the franchise or for any other cause, and which such corporation would have been entitled to recover, during the time limited in the said purchase of the franchise; and during that time, the corporation shall not be entitled to prosecute for such penalties.

See § 671, and cross-references.

[See *Atty.-Gen. v. Nav. Co.*, 84 N. C. 705.]

§ 676. The corporation whose franchise shall have been sold as aforesaid shall in all other respects retain the same powers and be bound to the discharge of the same duties and liable to the same penalties and forfeitures as before such sale.

See Const., art. VIII, § 2. Franchise may be sold. § 671. Debts not extinguished. § 687.

§ 677. Any number of persons not less than three who may be desirous of engaging in any business not unlawful, except building railroads, or banking, or insurance, at any place within the State, may, if it please them, become incorporated in the manner following, that is: Such persons shall, by

Articles of agreement — Code, § 677, as amended.

articles of agreement, under their hands and seals, set forth before the clerk of the superior court of the county where such mining is to be conducted or manufactory established, and in case of any other association, before the clerk of the superior court of the county where the meetings may be held: 1. The corporate name. 2. The business proposed. 3. The place where it is proposed to be carried on. 4. The length of time desired, not exceeding thirty years, except as to mining corporations, the term for which shall not exceed sixty years. 5. The names of persons who have subscribed. And, in the case of mining and manufacturing, shall also state: 6. The amount of capital; and 7. The number of shares, and the amount of each (the same not less than fifty dollars each).

The above section has been amended from time to time as follows:

L. 1885, Ch. 19.

The general assembly of North Carolina do enact:

§ 1. That section 677 of the Code of North Carolina shall be amended as follows, to-wit: Any number of persons not less than three who may be desirous of engaging in any business, or of forming any company, society or association whatever, not unlawful, except building railroads, or banking, or insurance, at any place within the State, shall be incorporated in the manner following, and in no other way, unless it be made to appear that the object of the corporation cannot be attained under the general law, that is to say, such persons shall, by articles of agreement under their hands and seals, set forth before the clerk of the superior court of the county where such business is to be carried on where the application shall be made, or the meeting of the corporation may be held, the following:

- (1). The corporation name;
- (2). The business proposed;
- (3). The place where it is proposed to be carried on;
- (4). The length of time desired;
- (5). The names of persons who have subscribed;
- (6). The amount of the capital, the number of shares and amount of each.

§ 2. That section 678 of the Code be amended by inserting in line eleven, after the word "county," the following: "That this shall not be construed to apply to benevolent, charitable, religious, scientific or literary associations, nor to companies to build turnpike roads or bridges over non-navigable streams."

§ 3. That the clerk of the superior court shall at all times, upon application, have power to amend or change the act of incorporation, after thirty days' notice, by publication to be made on the part of the applicant: Provided, there be no change of the business incorporated.

§ 4. That this act shall be in force from and after its ratification.

(In the general assembly read three times, and ratified this the 27th day of January, A. D. 1885.)

L. 1889, Ch. 170.

AN ACT to amend section 677 of the Code and chapter 19, Laws of 1885, in reference to forming corporations before the clerk.

The general assembly of North Carolina do enact:

§ 1. That section 677 of the Code as amended by chapter nineteen of the laws of the session of one thousand eight hundred and eighty-five be amended by adding thereto the following: "Pro-

vided, That no corporation shall be formed under this section and chapter, nor shall any letters of incorporation issue thereunder to any corporation or company whose capital stock shall amount to more than one million dollars; nor shall any act or charter of incorporation which has been or may be taken out, formed or issued under this section and chapter be changed or amended before the clerk under section three of said chapter nineteen so as to increase the capital stock to an amount exceeding one million dollars; And provided further, That the general assembly shall have power at any and all times by statute to revoke, annul or repeal any letters or charter of incorporation which have been or may be taken out or issued or formed under this section and chapter, and shall so have power to alter, amend or modify the same.

§ 2. That this act shall be in force from and after its ratification.

(Ratified the 25th day of February, A. D. 1889.)

L. 1891, Ch. 257.

AN ACT to amend section six hundred and seventy-seven, chapter sixteen of the Code.

The general assembly of North Carolina do enact:

§ 1. That section six hundred and seventy-seven, line twenty, of the Code, be amended by striking out the word "fifty" and insert the word "five."

§ 2. That this act shall be in force from and after its ratification.

(Ratified the 3d day of March, A. D. 1891.)

L. 1893, Ch. 244.

AN ACT to amend chapter two hundred and fifty-seven of the laws of one thousand eight hundred and ninety-one.

The general assembly of North Carolina do enact:

§ 1. That chapter two hundred and fifty-seven of the laws of one thousand eight hundred and ninety-one be amended by striking out the word "five" at the end of section one and inserting the word "two" instead thereof, and by adding to said section the following: "All charters heretofore formed before the clerk of the superior courts of this State, where the shares of the capital stock have been fixed at two dollars per share or over that sum, are hereby declared to be valid to all intents and purposes as if the amount of said shares had been fixed at an amount allowed by law at the time of their formation."

§ 2. That this act shall be in force from and after its ratification.

(Ratified the 2d day of March, A. D. 1893.)

Corporation to be formed by general laws. Const., art. VIII, § 1.

[A provision in the charter of an incorporated company that the capital stock "shall be issued as only paid stock" does not permit shares of stock to be issued to stockholders without payment for it by them in money, or its equivalent in property at an honest valuation. *Clayton v. Knob Co.*, 109 N. C. 385; s. c., 14 S. E. Rep. 36.

Where a person has agreed to become a stockholder in a corporation, and has enjoyed the benefits of membership he cannot, in a suit by the corporation to recover his unpaid subscription, set up as a defense that the corporation was not legally organized. *Mills Co. v. Burns*, 141 N. C. 353; s. c., 19 S. E. Rep. 238. And where articles of agreement signed by a subscriber to stock of a corporation provided that installments falling due on subscription should bear eight per cent. interest, such rate continues until actual payment. *Id.*

Where one executes a note to a corporation as security for the payment of stock therein, the transaction is a subscription to or purchase of

the stock from the company itself, and not a purchase from another, and hence a tender of a certificate by the company is not necessary before bringing action on the note. *Cotton Mills v. Abenathy*, 115 N. C. 402; s. c., 20 S. E. Rep. 522.

Unless provided otherwise in the charter, it is the duty of the corporation to keep its principal place of business, its books and records, and its principal officers within the State which incorporated it, to an extent necessary to the fullest jurisdiction and visitatorial power of the State and its courts. *Simmons v. Steamboat Co.*, 113 N. C. 147; s. c., 18 S. E. Rep. 117.]

§ 678. The said articles of agreement, after having been proved by a subscribing witness, or acknowledged before the clerk, shall be recorded by the said clerk in a book to be kept for this purpose in his office and marked "Record of Incorporations," and said clerk shall keep in said book an alphabetical index of the names of the corporations: Provided, That the said clerk, before recording the said articles of agreement, shall collect from the persons signing said articles, the sum of twenty-five dollars, to be paid by the said clerk to the treasurer of the county, for the benefit of the public school fund of the county; and the said clerk shall, at the next regular meeting of the board of commissioners of the county, report the fact of such collection and payment to the treasurer, to the said board, to the end that the said treasurer may be charged with the same: Provided further, That if said clerk shall fail to collect said sum of twenty-five dollars, or when collected, shall fail to pay over the same to the county treasurer, or shall fail to report the fact of such collection and payment to the board of commissioners, he shall forfeit and pay the sum of fifty dollars, one-half to the use of the public school fund of the county, and the other half to the person suing for the same; and his sureties on his official bond shall also be liable for said penalty, and said clerk shall be guilty of a misdemeanor, and fined not exceeding fifty dollars.

(See Act of 1885, ch. 19, following § 677, supra.)

Fees of clerk. § 680. Such articles as evidence, § 682.

[A corporation authorized to be constituted under an act of assembly cannot take a bond, payable to it, until the pre-requisites have been performed to give it corporate existence. *R. R. Co. v. Wright*, 5 Jones' L. R. 304.]

A corporation being a creation of law, whose foundation is the grant of a franchise, there must be an acceptance of the grant or charter before it can take effect. *Fertilizer Co. v. Clute*, 112 N. C. 440; s. c., 17 S. E. Rep. 419.]

§ 679.

L. 1893, Ch. 318.

AN ACT to amend section six hundred and seventy-nine of the Code and to regulate the formation of private corporations.

The general assembly of North Carolina do enact:

Section 1. (As amended March 13, 1895.) That section six hundred and seventy-

nine of the Code be stricken out and the following be substituted therefor: "After the said articles of agreement shall have been recorded, the clerk of the superior court shall send a copy of the same, certified under the seal of said court, to the secretary of State. The secretary of State shall thereupon cause said articles of agreement to be recorded in his office in a book kept for that purpose and known as the 'corporation book,' and shall issue letters patent under the great seal of the State declaring said persons signing such articles of agreement a corporation for the purpose and according to the conditions of said articles, which said letters shall be recorded in the clerk's office where such articles of agreement are recorded."

§ 2. That all corporations heretofore formed under the provisions of the general law may cause copies of the articles of agreement under which corporations were formed to be filed in the office of the secretary of State, attested by the clerk of the superior court of the county in which such articles were filed under the seal of said court. On receipt of such copies the secretary of State shall at once cause the same to be recorded in the corporation book and shall thereupon issue letters patent as prescribed in the foregoing section.

§ 3. That the secretary of State shall in his semi-annual report include a statement showing the number of corporations which have filed articles of agreement in accordance with this act, and the amount of capital stock of each.

§ 4. That to pay for the extra labor necessarily incurred in carrying out the provisions of this act the secretary shall collect and retain the following fees, viz.: For recording the articles of agreement, one dollar for the first three copy sheets and ten cents for each copy sheet in excess thereof; for copying, the same fees as per recording; for issuing and recording the letters patent, including the great seal, two dollars.

§ 5. (As amended March 13, 1895.) That every bill introduced in either house of the general assembly to incorporate any company, including railroad companies, shall be accompanied by a receipt from the State treasurer for fifty dollars. Provided, That charters for religious, charitable and educational institutions are hereby exempted from the provisions of this act.

§ 6. That all laws and clauses of laws in conflict with this act are hereby repealed, and this act shall be in force from and after the first day of July, eighteen hundred and ninety-seven.

(Ratified the 4th day of March, A. D. 1893.)

[See *Young v. Rollins*, 85 N. C. 485.]

Those who participate in the organization of a de facto corporation are liable to creditors to the extent of their stock. *Foundry Co. v. Kilham*, 99 N. C. 501; s. c., 6 S. E. Rep. 680.]

Dividends; letters of incorporation; conveyances of real property — Code, §§ 680-685.

§ 680. Every company incorporated by letters under articles of agreement, shall pay the clerk of the superior court a fee of two dollars for taking the probate and recording the articles of agreement, also the expense of publication, and one dollar for the certificate declaring its incorporation.

See § 678.

§ 681. No such company shall declare any dividend, when its debts, whether due or not, shall exceed two-thirds of its assets.

[A director of a company occupies a fiduciary relation to the company which, by virtue of his office, he represents in the management of its principal functions. *Hill v. Lumber Co.*, 113 N. C. 173; s. c., 18 S. E. Rep. 107.

While a director of a company may lend its money when needed for its business and takes a lien upon corporate property as security for its repayment, provided the transaction be open and entirely fair and capable of strict proof as to its bona fides, yet where a corporation is insolvent, a director who is a creditor cannot, upon a debt theretofore existing, take advantage of his superior means of information to secure his debt as against other creditors; therefore a confession of judgment by an insolvent corporation in favor of a director who is a creditor, and upon a debt theretofore existing is void as against other creditors. *Id.*]

§ 682. All such letters issued under the authority of this chapter, and copies thereof certified by the clerk of the superior court of the county where the same are recorded, shall in all cases be admissible in evidence; and the letters aforesaid shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company, purporting thereby to have been established.

See §§ 678-679.

[Copies of letters of incorporation are admissible to show prima facie the existence of a corporation, and it cannot avoid its liability for debts because in fact it had but an inchoate existence. *Marshall v. Bank*, 108 N. C. 629; s. c., 13 S. E. Rep. 182.

The original record of incorporation, made by the clerk, in pursuance of provisions of chapter 16, in a book kept in his office for that purpose, is admissible in evidence to prove fact of incorporation. The letters of incorporation are evidence, but not the only evidence, to prove that fact. *Iron Co. v. Abernathy*, 91 N. C. 545.

Before records and books of a corporation can be received in evidence for any purpose, it must be admitted or proved that the entries were made by an authorized servant or agent. *Glenn v. Orr*, 96 N. C. 413; s. c., 2 S. E. Rep. 538.

A copy duly certified of the organization of the national banking association, under sections 5133, 5134, Rev. Stat. U. S., is sufficient evidence of the corporate existence of such organization. *Shaffer v. Hahn*, 111 N. C. 1; s. c., 15 S. E. Rep. 1033.

One contracting with a corporation, held estopped to deny its corporate existence. *Fayetteville Water Works v. Tillinghast*, 25 S. E. Rep. 51.]

§ 683. (Repealed February 11, 1893.)

§ 684. No corporation created by letters of agreement under this chapter for the purposes herein allowed shall, under any pre-

tence, engage in the business of banking: Provided, That in the transaction of their business, they may make, and take and indorse, when necessary, all such bonds, notes and bills of exchange, as the particular business may require.

See general powers of corporation. § 663.

§ 685. (As amended February 9, 1893.) Any corporation may convey lands, and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal and signed by the president or presiding member or trustee, and two other members of the corporation, and attested by witnesses, or by deed of bargain and sale or other proper deed sealed with the common seal and signed by the president or presiding member or trustee and attested by the secretary of the company. But any conveyance of its property, whether absolutely or upon condition, in trust, or by way of mortgage executed by any corporation, shall be void and of no effect as to the creditors of said corporation, existing prior to, or at the time of the execution of said deed, and as to torts committed by such corporation, its agents or employees, prior to, or at the time of the execution of said deeds: Provided, Said creditors, or persons injured, or their representatives shall commence proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed, as required by law.

See § 666, and cross-references.

[It seems that a corporation may adopt as its seal the individual seals of its officers affixed to a deed of the corporation when it has no seal of its own. *Taylor v. Hoggie*, 83 N. C. 241.

The conveyance by a corporation of its property in trust for creditors is not void as to pre-existing creditors, unless the latter shall bring suit to enforce their claims within sixty days after the registration of such conveyance. *Blalock v. Mfg. Co.*, 110 N. C. 99; s. c., 14 S. E. Rep. 501.

The deed of a corporation, the concluding clause being, in witness whereof the said corporation "has caused its indenture to be signed by its president and attested by its secretary, and its common seal to be affixed," with the signature and seal, is properly executed as a common-law deed. *Bason v. Mining Co.*, 90 N. C. 417. The statute providing that the president and two other members of the corporation shall sign its deeds conveying real estate, is an enabling act, and does not affect the common-law method. *Id.*

What are the essential conditions required to make effectual a conveyance of real estate owned by a corporation. *Id.*; *Clayton v. Cagle*, 97 N. C. 200; s. c., 1 S. E. Rep. 523.

A mistake or omission in the corporate name of a deed to a corporation is not fatal if it clearly proves from the deed itself what corporation was intended. *Asheville Div. v. Aston*, 92 N. C. 578.

A mortgage deed executed according to above section is the act of the corporation alone, and not that of its officers, by whose agency the deed is executed; and it will not operate as an estoppel to prevent them from asserting any claim they may have to any security it provides. *Bank v. Mfg. Co.*, 100 N. C. 345; s. c., 5 S. E. Rep. 81.

A mortgage by a corporation, to which corporate seal is not attached, is ineffectual to pass title

as against creditors. *Duke v. Markham*, 105 N. C. 131; s. c., 10 S. E. Rep. 1003.

Any conveyance or mortgage of its property executed by any corporation is void as to its creditors existing at the time of the execution thereof, and each shall commence proceedings to enforce their claims against the corporation within sixty days after ratification of the conveyance. *Id.*

A deed from a corporation, properly executed, containing in its body the true name of such corporation is not rendered invalid by the recital therein that it is made by "the president and director" of the corporation, as these words may be rejected as surplusage. *Shaffer v. Hahn*, 111 N. C. 1; s. c., 15 S. E. Rep. 1033.

Where a deed was signed by one representing himself to be the president of a corporation, and the probate thereof recited the fact that the proofs show such person was, in fact, such officer, held, that it was not necessary upon a trial involving title under the deed, to offer further evidence of the official character of the person signing the deed. *Id.*

When a deed of a corporation is signed in the name of corporation by its president, vice-president, secretary and treasurer, who constituted all the stockholders, directors and officers of the corporation, and the corporate seal is affixed to it, it is properly executed as a common-law deed. *Heath v. Cotton Mills*, 115 N. C. 202; s. c., 20 S. E. Rep. 369.

A certificate by the clerk of a superior court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purposes therein set forth," was sufficient to warrant the registration of the deed. *Id.*

The provisions of above section apply to corporations generally and are not restricted to those only formed by foreclosure under a deed of trust of an insolvent or expiring corporation. *Bank v. Mfg. Co.*, 96 N. C. 238; s. c., 3 S. E. Rep. 363.

A deed to a corporation is valid, though there is a mistake or omission in the title, if it can be shown what corporation was intended. *Simmons v. Allison*, 118 N. C. 763; s. c., 24 S. E. Rep. 716.

The method of executing deeds by corporations, prescribed by above section, is not exclusive. The common-law methods are still valid. *Barcello v. Hapgood*, 118 N. C. 712; s. c., 24 S. E. Rep. 124.

A corporation's deed for realty may be executed by any agent having authority from the company to represent it for that purpose. *Id.*

A strictly private corporation can lawfully sell any of its property, real or personal, just as an individual can; but such is not the case with quasi public corporations, which have duties to perform in which the public are interested. *Id.*

When it is doubtful whether the right to hold land comes within the purview of a corporation's powers, that question can be raised as against any corporation exhibiting title to realty only by a proceeding authorized by the State. *Id.*

Foreign corporations, having a right under their charters to acquire and sell lands, can exercise such rights in this State to same extent as domestic corporations. *Id.*

Conveyance by corporation is void as to existing creditors, under Code, section 685. *Langston v. Greenville L. & F. Co.*, 26 S. E. Rep. 644.

The recital in a deed by a corporation that it was executed pursuant to an order of the directors dispenses with proof of the action of the board otherwise than by the deed itself. *Caldwell v. Morgantown Mfg. Co.*, 28 S. E. Rep. 475.

Both at common law and under the Code, § 685, a deed executed in the corporate name by the president, or by him and other members, without the corporate seal, is not evidence of title, though the word "seal" occur after the signatures. *Id.*

§ 6-6. It shall be the duty of the attorney-general to bring an action in the superior court of the county as in this Code directed, to restrain by injunction, any corporation from assuming or exercising any franchise,

or transacting any business not allowed by its charter; to restrain any person from exercising corporate franchises not granted; to bring directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care; to remove such officers or trustees upon proof of gross misconduct; to secure, for the benefit of all interested, the property or funds aforesaid; to set aside and restrain improper alienations thereof, and generally to compel the faithful performance of duty, and prevent all malversation, speculation and waste. And in case of fraud by the president, directors, managers, or stockholders, in any corporation, the court shall render personally liable to creditors and others injured thereby such of the directors and stockholders as may have been concerned in the fraud.

Injunction. § 343. Action to annul a corporation. § 605. Act of 1893, at p. 25; see § 603, subd. 1, and cross-references.

[An information, filed by attorney-general for purposes of forfeiting a charter, must set out the substance of a good cause of forfeiture in the essential circumstances of time, place and overt acts. *Atty.-Gen. v. R. R. Co.*, 6 Fed. L. R. 456.]

When charter expressly imposes a duty upon a corporation, performance of such duty must be taken to have been required as a material stipulation, for non-performance of which the State may put an end to the contract. *Id.* Any fundamental change in the charter of a corporation relieves a non-assenting subscriber from liability upon his stock. *Bank v. City*, 85 N. C. 433; *II. R. Co. v. Leach*, 4 Jones' L. R. 340.

Deed by a corporation formed under general corporation laws of the State, conveying its property to a trustee for the benefit of its creditors, is not fraudulent per se because it contains a provision that the trustees may sell at private sale any of the property conveyed, at such price as may be approved by the president and a majority of the board of directors, or because the president of the company is a preferred creditor. While these facts may arouse suspicion and are evidence of fraudulent intent, they do not raise such a presumption of fraud as will impose upon those claiming under the deed the burden of rebuttal. *Balock v. Mfg. Co.*, 110 N. C. 99; s. c., 14 S. E. Rep. 501.]

§ 687. No body corporate, hereafter to be established, shall exist for a longer term than sixty years, unless otherwise provided in the act creating the same; but in the case of a dissolution of a corporation by any judgment or decree, the debts due to, or from it, shall not be extinguished.

Dues from corporation, how secured. Const., art. VIII, § 2; see note to § 668. Corporation liable for debts. § 676.

§ 688. When any act shall have passed, or letters of agreement, as provided in this chapter, shall have been recorded, creating a body corporate, and the corporators, for two years, shall neglect or fail to organize the company, and carry into effect the intent of the act; or when organized, if they at

Acquisition of real property; dissolution — Code, §§ 689-694.

any time for two years together shall cease to act, then such disuse of their corporate privileges and powers shall be deemed and taken as a forfeiture of the charter.

Action to annul charter. § 605.

[Fact that a corporation avails itself of only one of several privileges granted by its charter does not invalidate the act of incorporation. *Mills Co. v. Burns*, 114 N. C. 353; s. c., 19 S. E. Rep. 238.]

§ 689. The shares of stock in all incorporated joint-stock companies shall be deemed personal estate.

See Const., art. V, § 3.

[The right to buy in and cancel its own stock may sometimes be exercised by corporation, but not in derogation of the rights of bona fide creditors. *Heggie v. Assn.*, 107 N. C. 581; s. c., 12 S. E. Rep. 275.

The owner of orders for the payment of shares of stock in the corporation cannot be allowed to interplead in supplementary proceedings by a plaintiff judgment creditor who has obtained judgment. *Id.*

Unless restrained by some provision of its organic law, a corporation may purchase its own stock. *Blalock v. Mfg. Co.*, 110 N. C. 99; s. c., 14 S. E. Rep. 501.

Shares of stock in a foreign corporation are personal property, and when the owner lives in this State, are taxable here. *Worth v. Comrs.*, 90 N. C. 409.

Where, as a basis of a sale of stock, the seller makes representations as to the financial condition of the corporation and the value of the stock therein, such representations constitute a warranty of the truth thereof, and for a breach thereof the seller is liable to the purchaser. *Blackall v. Rowland*, 116 N. C. 389; s. c., 21 S. E. Rep. 296.

A bank, knowing that certificates of stock of a testator were under his will held in trust, held liable over to the remainderman for the value of the stock when sold by the beneficiary on issue of new certificates to the beneficiary. *Cox v. First Nat. Bank*, 26 S. E. Rep. 22.]

§ 690. Any corporation may take a mortgage upon any quantity of land to secure a debt owing to the corporation, and may take a conveyance of any quantity of land in partial or total satisfaction of a debt due the corporation; and may purchase any quantity of land at a sale under execution against a debtor of the corporation or at any individual sale of the property of a debtor of the corporation; but the corporation purchasing such land to a quantity exceeding, with its lands previously owned, three hundred acres, shall not be capable of holding the same for more than thirty years from the date of such purchase, and all lands so purchased in excess of the limited quantity and held by any corporation shall at the end of thirty years from the date of such purchase be forfeited to the State, and may be recovered in an action brought in the name of the State, by its proper officer. The corporation purchasing such land may at any time within thirty years next ensuing the date of its purchase

convey by deed to a bona fide purchaser for value under its common seal such estate in said lands as it would have had under its purchase but for the limitation herein contained.

See § 666, and cross-references.

§ 691. It shall be the duty of the grand jury in each county to inquire and report to the solicitor what lands at any time are held by any corporation in violation of this chapter; and it shall be the duty of every solicitor, either upon or without such report, to institute proceedings for the forfeiture of all such lands, and to report the same to the governor from time to time.

§ 692. The lands recovered by the State under this chapter shall not be the subject of entry, but shall be sold at public sale for cash, under the direction of the governor and attorney-general, and the proceeds paid into the State treasury; and the sale shall be reported to the general assembly at its next ensuing session.

See § 666, and cross-references.

§ 693. All corporations (except railroad, mining, manufacturing corporations, and companies to supply the cities and towns of the State with water), which shall be seized in fee, or for a longer term than three lives in being, or possessed for a longer time than thirty years of any lands or tenements, exceeding three hundred acres in quantity, are required, within said time, to dispose of such excess.

See § 666, and cross-references.

§ 694. All corporations formed under this chapter may be dissolved by special proceeding, instituted by the company or by any corporator, or by any judgment creditor, whose execution issued to the county in which the corporation has its only or principal place of business, shall be returned unsatisfied, or by the authority of the attorney-general in the name of the State, for the causes hereinafter mentioned, to-wit:

(1) For any abuse of its powers to the injury of the public or of the corporators, or of its creditors or debtors;

(2) For non-user of its powers for two years or more consecutively;

(3) For insolvency manifested by the return of an execution unsatisfied upon a judgment against the company, docketed in the superior court of the county where it has its only or principal place of business;

(4) Upon any conviction of the company of a criminal offense if such offense be persistent.

See § 605.

[A corporation may forfeit its charter as for condition broken or for breach of trust, if it fails to act up to the end for which it was incorporated. *Simmons v. Steamboat Co.*, 113 N. C. 147; s. c., 18 S. E. Rep. 117. Persistent failure of a corporation chartered in this State to maintain its principal place of business within the State as required by its charter, and the withdrawal of all its agencies from the State, will authorize the courts to decree a dissolution of such corporation, under above section, upon suit of a stockholder. *Id.*]

§ 695. Upon any special proceedings for the dissolution of a corporation, the summons shall be served on the chief or other officer of the corporation authorized for that purpose as writs of summons are required to be in like cases, and shall be served on the corporators, creditors, dealers and others interested in the affairs of the company, by publishing a copy thereof at least weekly for not less than three successive weeks in some newspaper printed in the county in which such corporation has its only or principal place of business, or if there be no such newspaper published, then by posting a copy of such summons at the door of the courthouse of such county, and publishing a copy thereof for the time and in the manner aforesaid in the newspaper published nearest the county seat of the county in which such corporation has its only or principal place of business, or in some newspaper published in the city of Raleigh; and such publication shall be deemed and held sufficient service on all the corporators, creditors of, or dealers with, such corporation, and all such corporators, creditors or dealers or other parties interested, may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice shall prescribe.

See § 663, subd. 1, and cross-references.

§ 696. (As amended February 7 and February 19, 1885.) Every bill introduced in either house of the general assembly, to incorporate any company, or for the benefit thereof, or to amend any act relating to such company or corporation, shall be accompanied by a receipt from the State treasurer for twenty-five dollars. This section shall not be construed to apply to bills to amend an act where the business is unchanged, nor to benevolent, charitable, literary or religious associations, nor to railroad companies, nor companies to build turnpike roads, nor bridges over non-navigable streams.

Corporation to be created by general laws. Const., art. VIII, § 1.

§ 697. If a sale be made under a deed of trust or mortgage executed by any corporation on all its works and property, and there

be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the corporation as they were at the time of making the deed of trust or mortgage, but any works which the corporation may after that time and before the sale have constructed, and all other property of which it may be possessed at the time of the sale other than debts due to it. Upon such conveyance to the purchaser, the said corporation shall ipso facto be dissolved, and the said purchaser shall forthwith be a new corporation by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded, in the same manner in which the conveyance shall be recorded.

See § 672, and cross-references.

[See *Gooch v. McGee*, 83 N. C. 59.]

§ 698. The corporation created by, or in consequence of, such sale and conveyance shall succeed to all such franchises, rights and privileges, and perform all such duties as would have been, or should have been, performed by the first corporation, but for such sale and conveyance, save only that the corporation so created, shall not be entitled to the debts due to the first corporation, and shall not be liable for any debts of, or claims against, the first corporation, which may not be expressly assumed in the contract of purchase; nor shall the property, franchise or profits of such new corporations be exempt from taxation. And that the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein, as he or they may think proper, not exceeding the amount of stock in the first corporation at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint-stock companies generally, except only, that the first meeting of the stockholders shall be held on such day, and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper. And when a corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property and debts due it, shall be subject to the payment of debts due by it, and then to distribution among the members according to their respective interests; and such corporation may sue and be sued as before, for the purpose of collecting debts due it, prosecuting rights under previous contracts with it, and enforcing its liabilities and distributing the

Taxation; conveyances; currency — Code, §§ 699-701, 1255, 2493.

proceeds of its works, property and debts among those entitled thereto.

See § 671, and cross-references. Purchaser of franchise to have same remedies as corporation. § 675.

[See *Gooch v. McGee*, 83 N. C. 59; *Young v. Rollins*, 85 *Id.* 485.]

§ 699. Whenever taxes are duly assessed, charged and extended against any corporation having chartered rights, or doing business in this State, or having property in this State, or against any person resident in this State or doing business or having property in this State, and the tax-list is in the hands of any officer or tax collector, it shall be competent for such officer or tax collector, whenever said taxes, whether listed or unlisted, are due and unpaid, to levy upon, seize and take into his possession such part of the property belonging to such person or corporation as may be necessary to pay such taxes listed or unlisted, whether the property of such corporation or person be in the hands of a receiver duly appointed or not.

See Act of 1895, at p. 25.

[A proceeding in the nature of a creditor's bill, with or without a prayer for its dissolution, may be brought by the State or a county against a corporation against which taxes have been assessed, and for the payment of which no property can be found to be levied upon. *State v. Georgia Co.*, 112 N. C. 34; s. c., 17 S. E. Rep. 10.]

§ 700. In all cases provided for in the preceding section, it shall not be necessary for such officer or tax collector to apply to and obtain from the court appointing such receiver, or having jurisdiction of the property or of the receiver, an order for the payment of such taxes, but the same may be collected as aforesaid, by distraint and seizure, as if the property or corporation was not in the hands of a receiver. This section and the preceding section shall apply to all taxes, whether State, county, town, or municipal; and shall be liberally construed in favor of, and in furtherance of, the collection of said taxes.

See Act of 1895, at p. 25.

§ 701. This chapter, unless otherwise declared herein, or in the chapter entitled *Railroads and Telegraphs*, shall apply to all corporations, whether created by special act of assembly, by letters of agreement under this chapter, or by the chapter entitled *Railroads and Telegraphs*. And this chapter and the chapter on *Railroads and Telegraphs*, so far as the same are applicable to railroad corporations, shall govern and control anything in the special act of assembly to the contrary notwithstanding, unless in the act of the general assembly creating the corporation, the section or sections of this

chapter, and of the chapter entitled "*Railroad and Telegraph Companies*," intended to be repealed, shall be specially referred to by number, and as such, specially repealed.

CHAPTER XXVII.

Deeds and Conveyances.

Sec. 1255. Property of corporations not exempt from certain liabilities on account of mortgages.

§ 1255. Mortgages of incorporated companies upon their property or earnings, whether in bonds or otherwise, hereafter issued, shall not have power to exempt the property of earnings of such incorporations from execution for the satisfaction of any judgment obtained in courts of the State against such incorporation for labor performed nor for material furnished such incorporation, nor for torts committed by such incorporation, its agent or employees, whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding.

See § 606, and cross-references.

[Debts contracted by a cotton mill company for cotton, flour and other like materials, which do not attach to the freehold or permanently improve the property of the corporation, are not entitled to priority over a mortgage debt under the provisions of above section. *Heath v. Cotton Mills*, 115 N. C. 202; s. c., 20 S. E. 369.

Materials furnished to a corporation, which in no way attach to or enhance the value of the property attained, do not, under provisions of above section, have priority as to lien over a previously acquired mortgage. *Paper Co. v. Chronicle*, 115 N. C. 143; s. c., 20 S. E. Rep. 366.

Corporations other than railroad companies have a general power to mortgage their property, unless prohibited by some provisions in the charter, the right to mortgage being natural result of the right to incur an indebtedness. *Id.*

A mortgage executed by a corporation pursuant to a resolution adopted by a majority of stockholders at meeting which was specifically called, is valid against creditors of a corporation other than the mortgage creditors. *Id.*

In absence of fraud and of objection on part of stockholders, defects in a proceeding by which assent of stockholders is given, cannot invalidate the mortgage unless they are of such a substantial character that the giving of the assent cannot be inferred. *Id.*]

Volume 2.

CHAPTER XIII.

Currency.

Sec. 2493. Corporations not to issue bills, notes, etc., for circulation.

2494. Same; penalty.

§ 2493. No person or corporation, unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note or obligation, or any other kind of security, whatever may be its form or name, with the intent that the

Receivers; duplicate certificates of stock — Acts, February 19 and March 7, 1885.

same shall circulate or pass as the representative of, or a substitute for, money, on pain of forfeiting and paying, for each offense, the sum of fifty dollars; and if the party offending be a corporation, of having also violated its charter. And every person offending against this section, or aiding or assisting therein, shall be guilty of a misdemeanor.

[See State v. Humphreys, 2 D. & B. 555.]

§ 2494. No person or corporation shall pass or receive, as the representative of, or as the

substitute for, money, any such bill, check, certificate, promissory note, or other security of the kind mentioned in this chapter, whether the same were issued within or without the State. And any person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section, shall for every such offense forfeit and pay five dollars, and shall be guilty of a misdemeanor.

[Above section does not apply to a bank. State v. Bank, 3 Jones' L. R. 450.]

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1883.

1. Concerning the appointment of receivers.
2. To protect corporations from loss in issuing duplicate certificates of stock.
3. To limit liability of executors, administrators, etc., where stock in corporation has been transferred to them.
4. To amend chapter sixteen of the Code to provide for amendment to charter.
5. To provide for the assessment of property and collection of taxes.
6. To raise revenue.
7. To require all bankers and corporation officials to take an official oath.

Act 1.

AN ACT concerning the appointment of receivers in certain cases.

The general assembly of North Carolina do enact:

Section 1. That in all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom such application is made or pending shall have the discretionary power to refuse the appointment of a receiver, if the party against whom such relief is asked, whether a person, partnership or corporation, shall tender to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient sureties and duly justified according to law, conditional for the payment of such amount as may be recovered in such action, and summary judgment may be taken upon said undertaking as in the case of official bonds under sections one thousand eight hundred and eighty-nine and one thousand eight hundred and ninety of the Code: Provided, That in the progress of the action the court shall have power in its discretion to require additional sureties on such undertaking.

§ 2. That this act shall be in force from and after its ratification.

(In the general assembly read three times, and ratified this the 19th day of February, A. D. 1885.)

Appointment of receiver. § 379; see § 663, subd. 1, and cross-references.

Act 2.

AN ACT to protect incorporated companies from loss in issuing duplicate certificates of stock.

The general assembly of North Carolina do enact:

Section 1. That it shall be lawful for any incorporated companies in this State that issue certificates of stock to their stockholders, to require of any stockholder claiming to have lost his certificate of stock a good and sufficient bond indemnifying them against loss before they issue a duplicate certificate.

§ 2. That the duplicate certificate issued in accordance with section one of this act may be held by the treasurer of such company issuing the same as an escrow recorded in the name of the person claiming to have lost the original, or his assigns, and he or his assigns shall be entitled to any dividends or profits of right belonging to said original certificate for the term of five years, and at the expiration of five years from the time of issuing the duplicate certificate, the treasurer of the company shall deliver to the person appearing on the records of the company as the owner of the same, his heirs, administrators, executors or assigns, the said certificate, and the original certificate shall be null and void against the company.

§ 3. That all laws or clauses of laws in conflict with this act are hereby repealed.

§ 4. That this act shall be in force from and after its ratification.

(In the general assembly read three times, and ratified this the 7th day of March, A. D. 1885.)

Liability of executors, etc.; amendments; taxation — Acts, March 6, 1893; March 12, 1895.

Act 3.

AN ACT to limit the liability of executors, administrators, guardians and trustees in cases where stock in corporation has been transferred to them.

The general assembly of North Carolina do enact:

Section 1. No person holding stock in any corporation in this State as executor, administrator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such fund would have been had he been living and competent to act and hold the stock in his own name.

§ 2. That this act shall be in force from and after its ratification.

(Ratified the 6th day of March, A. D. 1893.)

See Const., art. VIII, § 2.

Act 4.

AN ACT to amend chapter sixteen of the Code to provide for amendments to charters obtained before the clerk.

The general assembly of North Carolina do enact:

Section 1. Any corporation desiring to amend its plan of incorporation, as granted under chapter sixteen of the Code, shall cause the said amendment to be certified to the clerk by the president or other chief officer thereof and attested by its secretary, showing the same to have been previously authorized and adopted by a majority of the stockholders in meeting assembled, and the clerk shall record the same and cause notice thereof to be given as provided in section six hundred and seventy-nine of the Code. And for all his services under this act the clerk shall receive the same fees as are prescribed in section six hundred and eighty-six of the Code.

§ 2. That this act shall be in force from and after its ratification.

(Ratified the 6th day of March, A. D. 1893.)

See § 686.

Act 5.

AN ACT to provide for the assessment of property and the collection of taxes.

The general assembly of North Carolina do enact:

§ 14. All taxable polls and all personal property, except such shares of capital stock

and other property as are directed to be listed otherwise in this act, shall be listed in the township in which the person so charged resides on the first day of June. The residence of a corporation, partnership or joint-stock association, for the purposes of this act, shall be deemed to be in the township in which its principal office or place of business is situated. If, however, the corporation, partnership or association having separate places of business in more than one township, it shall give in each township the property or effects therein. Persons owning shares in incorporated companies taxable by law are not required to deliver to the list-taker a list thereof, but the president or other chief officer of such corporation shall deliver to the list-taker a list of all shares of stock held therein and the value thereof, except banks. The tax assessed on shares of stock embraced in said list shall be paid by the corporations respectively. The shares in any branch bank shall be returned and the taxes thereon paid in the counties where such branches are located.

§ 39. Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steamboat, street railroad, transportation, and all other companies and associations incorporated under the laws of this State, except insurance companies, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

(1.) The name of the location of company or association.

(2.) The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

(3.) The amount of capital stock paid up.

(4.) The market value, or if no market value, then the actual value of the shares of stock.

(5.) The assessed valuation of all its real and personal property (which real and personal property shall be listed and valued as other real and personal property is listed and assessed under this chapter).

The aggregate of the fifth item shall be deducted from the aggregate value of its shares of stock as provided by the fourth item, and the remainder, if any, shall be listed, by list-taker, in the name of such company or corporation as capital stock thereof. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the list-taker to make such return or statement from the best information which he can obtain.

§ 75. That when any corporation doing business in this State shall fail or neglect to pay any taxes assessed or charged against it, when the same shall become delinquent, it shall be lawful for the sheriff to notify any agent or officer of said company, in the county where such tax is delinquent, that

the same is delinquent, and the amount due, and shall further notify such officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation not exceeding the amount of tax due to such sheriff; and if such agent or officer shall fail to pay over said moneys to the sheriff, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars. And if any corporation shall be delinquent for taxes for six months after they become due, its charter shall be forfeited and a receiver appointed by the clerk of the superior court to wind up the affairs of such corporation, upon suit brought by the attorney-general, if such corporation was chartered by the general assembly; and if by letters of incorporation issued from the clerk's office, upon an affidavit made by the sheriff that he cannot collect the taxes due, the letters shall be revoked and publication made to that effect, the costs of which shall be paid by the county.

§ 83. The words and phrases following, whenever used in this act, shall be construed to include in their meaning the definitions set opposite the name in this section, whenever it shall be necessary to the proper construction of this act:

7. The shares into which the capital stock of every incorporated company or association may be divided.

§ 119. All acts and parts of acts inconsistent with the provision of this act are hereby repealed: Provided, That such repeal shall not in any manner affect any rights heretofore acquired, or the collection of any taxes heretofore levied or assessed, or the validity of any sales for taxes heretofore made, or any right heretofore acquired under any law of this State.

§ 120. That this act shall be in force from and after its ratification.

(Ratified the 12th day of March, A. D. 1895.)

See Const., art. V, § 3. Tax collectors to levy upon property of corporation. § 699.

[It is the duty of the corporation, and not the individual stockholder, to list the stock for taxation and pay the taxes assessed thereon. *Loan Assn. v. County*, 115 N. C. 410; s. c., 20 S. E. Rep. 525.]

Act 6.

AN ACT to raise revenue.

The general assembly of North Carolina do enact:

SCHEDULE A.

* * * * *

§ 6. Whenever in any law or act of incorporation granted either under the general law or by special act, before or since the fourth of July, one thousand eight hundred

and sixty-eight, there is any limitation or exemption of taxation, the same is hereby repealed; and all the property and effects of all such corporations shall be liable to taxation, except property belonging to the State and municipal corporations and the property held for the benefit of churches, religious societies, associations or organizations, and property held for the benefit of charitable, educational, literary or benevolent institutions or orders, and also cemeteries: Provided, That no property whatever held or used for investments, speculation or for rent shall be exempt; any and all investments made by any railroad company or corporation in the stock, bonds or other securities of other corporations or loans shall be taxable upon the amount of the value of such investments, irrespective of the market or other value of a single share of such stock.

SCHEDULE B.

§ 37. On each and every private business corporation (railroad, banks and insurance companies excepted), a franchise tax in proportion to the amount of its capital stock, according to the following graduated scale, to-wit: On corporations having a capital stock of twenty-five thousand dollars (\$25,000.00) or less, five dollars (\$5.00); on corporations having a capital stock of over twenty-five thousand dollars (\$25,000.00) and not exceeding fifty thousand dollars (\$50,000.00), ten dollars (\$10.00); on corporations having a capital stock of over fifty thousand dollars (\$50,000.00) and less than one hundred thousand dollars (\$100,000.00) twenty-five dollars (\$25.00); on corporations having a capital stock of over one hundred thousand dollars (\$100,000.00), and not exceeding two hundred and fifty thousand dollars (\$250,000.00), fifty dollars (\$50.00); on corporations having a capital stock of over two hundred and fifty thousand dollars (\$250,000.00) and less than five hundred thousand dollars (\$500,000.00), one hundred dollars (\$100.00); on corporations having a capital stock of over five hundred thousand dollars (\$500,000.00), two hundred dollars (\$200.00); on companies having a capital stock of over one million dollars (\$1,000,000.00), five hundred dollars (\$500.00). By the term of "capital stock" in this section is meant the amount of capital fixed by the corporation charter, or by the stockholder pursuant to the powers granted in the charters; that in addition to the penalties otherwise provided in this act, the continued failure to pay the franchise tax imposed by this section on or before the first day of January of said year shall cause a forfeiture of the charter of such defaulting corporation, and its charter in that event shall be, and the same is hereby repealed. This section shall apply equally to all companies, whether home or foreign.

§ 53. That such person or corporations who are liable to pay the license tax or taxes pro-

Oath of office of corporate officers — Act, March 5, 1897.

vided for in schedules A., B. and C. of this act and the machinery act, and shall fail to pay the same as provided by law shall be guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars or imprisoned not exceeding six months, and the sheriff shall be allowed by the judge such compensation for making such report as he may deem just and proper, to be paid by the county.

§ 54. This act shall be in force from and after its ratification.

(Ratified the 9th day of March, A. D., 1897.)

See Const., art. V, § 3. Above act supersedes an Act of 1895.

[Shares of stock in a foreign corporation are personal property, and when the owner lives in this State, are taxable here. *Worth v. Comrs.*, 90 N. C. 409.

But a non-resident holder of shares in a corporation in this State is not liable to taxes here. *R. R. Co. v. Comrs.*, 91 N. C. 454.

Exemptions from taxation will never be presumed. *R. R. Co. v. Alsbrook*, 110 N. C. 137; s. c., 14 S. E. Rep. 652.

The property of a corporation belongs to it and not to the stockholders. *Marshall v. R. R. Co.*, 92 N. C. 322.

The general assembly may require a corporation to pay a license tax for the privilege of carrying on its business, and forbid counties or other municipalities to exact in their licenses a tax or fee. *Loan Assn. v. County*, 115 N. C. 410; s. c., 20 S. E. Rep. 526.]

Act 7.

AN ACT to require all bankers or officers and directors of railroads and State banks, or other corporations created or chartered by the general assembly of North Carolina, to take an official oath.

The general assembly of North Carolina do enact:

Section 1. That all bankers or officers and directors of banks, railroads and other cor-

porations, incorporated and doing business in the State, under the authority of the State, shall, before entering upon their duties as such officers and directors, or before beginning the business of banking, take an oath to observe and obey the Constitution and laws of North Carolina, and to well and truly discharge, according to law, all the duties of their offices.

§ 2. That it shall be the duty of the State treasurer to prepare a form of oath, in accordance with the foregoing provisions, and transmit copies of the same to the president of each and every one of said corporations, and to every banker in the State, on or before the first day of January of each year.

§ 3. That it shall be the duty of said bankers, or officers and directors, to duly qualify and subscribe to the said oath before some person authorized by law to administer oaths in this State, and cause the same to be transmitted to the said State treasurer on or before the first day of February in each year.

§ 4. That any of the said bankers, officers, and directors, who shall fail to observe the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be fined, or imprisoned, or both, at the discretion of the court.

§ 5. That the provisions of this act shall apply to officers and directors of railroads, State banks, and other corporations as aforesaid, now in office, and to all parties doing a banking business, and they shall be required to take and subscribe to said oath, on or before the first day of July, one thousand eight hundred and ninety-seven (1897), and said treasurer shall be required to duly forward blanks for said oaths, on or before the first day of June, one thousand eight hundred and ninety-seven (1897).

§ 6. This act shall take effect from and after its ratification.

(Ratified the 5th day of March, A. D. 1897.)

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NORTH DAKOTA.

CONSTITUTION OF NORTH DAKOTA — 1890.

PROVISIONS RELATING TO CORPORATIONS.

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- Sec. 176. Railroad company may be taxed on gross earnings.
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ARTICLE I.

Declaration of Rights.

- § 16. No * * * law impairing the obligations of contracts shall ever be passed.

See Const., art. VII, § 133. Power to alter charters reserved. Code, § 2851. Repeal of charters not to affect contracts existing. § 2943.

[Provision in charter exempting lands from taxation constitutes a contract which cannot be impaired by subsequent legislation. R. R. Co. v. County, 3 Dak. 1; s. c., 12 N. W. Rep. 561.]

§ 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

See Const., art. II, § 69; art. VII, § 131. Power of legislature reserved. § 2851.

§ 23. Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

See Const., art. XVII, § 212; Pen. Code, § 7041.

ARTICLE II.**Legislative Department.**

§ 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.

See art. VII, § 131; art. I, § 20.

ARTICLE VII.**Corporations other than Municipal.**

§ 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the State; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

See Const., art. I, § 20; art. II, § 69. General laws. §§ 2858 et seq. Power to alter and repeal reserved. §§ 2851, 2943.

§ 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this Constitution takes effect, shall thereafter have no validity.

Existing corporations may continue. §§ 3259, 3260.

§ 133. The legislative assembly shall not remit the forfeiture of the charter of any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

See §§ 3259, 3260.

§ 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this State shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State.

[Powers and duties of commissioners appointed to assess damages by reason of exercise or right of eminent domain. *R. R. Co. v. Covell*, 2 Dak. 487; s. c., 11 N. W. Rep. 106. Provisions of Code relative to assessment of damages are valid. *Id.*]

§ 135. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

See §§ 2887, 2888, 2895.

§ 136. No foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

See §§ 3261-3265.

[Section construed. *Wright v. Lee*, 2 S. Dak., 336; s. c., 51 N. W. Rep. 706.]

§ 137. No corporation shall engage in any business other than that expressly authorized in its charter.

General powers. § 2882.

§ 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

Bonds, how issued. § 2906. Capital stock, how increased or diminished. § 2905. Stocks or bonds to be issued only for value. § 2877.

§ 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

§ 140. Every railroad corporation organized and doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in the State for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded

the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; Provided, The provisions of this section shall not be so construed as to apply to foreign corporations.

§ 141. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

§ 142. Railways heretofore constructed, or that may hereafter be constructed, in this State are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone, and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this State; Provided, That appeal may be had to the courts of this State from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

§ 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with the railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 144. The term "corporation," as used in this article, shall not be understood as embracing municipalities or political subdivisions of the State unless otherwise expressly stated, but it shall be held and construed to include all associations and joint-stock companies having any of the powers

or privileges of corporations not possessed by individuals or partnerships.

"Corporation" defined. §§ 2850, 2854, 2855, 2856.

§ 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the State, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State treasurer for the redemption of such notes or bills.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this State, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

See §§ 7480-7484.

ARTICLE XI.

Revenue and Taxation.

§ 176. * * * The legislative assembly may, by law, provide for the payment of a per centum of gross earnings of railroad companies to be paid in lieu of all State, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right of way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

§ 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State or any county or other municipal corporation shall be a party.

[Provisions in charter exempting lands from taxation constitute a contract which cannot be impaired by subsequent legislation. R. R. Co. v. County, 3 Dak. 1; s. c., 12 N. W. Rep. 561.]

§ 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village

or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this State, shall be assessed by the State board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.

Taxation of corporate property. Act of 1897, at pp. 36, 37.

ARTICLE XII.

Public Debt.

§ 185. Neither the State nor any county, city, township, town, school district or any

other political subdivision shall loan or give its credit to make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

ARTICLE XVII.

Miscellaneous.

§ 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this State.

§ 212. The exchange of "black-lists" between corporations shall be prohibited.

See Pen. Code, § 7042.

THE REVISED CODES OF NORTH DAKOTA—1895.

POLITICAL CODE.

CHAPTER II.

The Legislative Assembly.

ARTICLE IV. PRINTING AND DISTRIBUTION OF LAWS AND DOCUMENTS.

Sec. 72. When official reports to be made.

§ 72. * * * All corporations, except such as are required to make their reports at some other specified time, which are re-

quired by law to make annual reports for any purpose to any State officer, shall make out and transmit the same on or before the fifteenth day of August of each year to the proper officer. For the purpose of making out such report the year shall begin on the first day of July of each year and end on the last day of June of the succeeding year.

Publishing false reports; penalty. § 7527.

CIVIL CODE.

CHAPTER XI.

Corporations.

- Art. 1. The creation of corporations.
 2. Corporate stock.
 3. Corporate powers.
 4. Corporate records.
 5. Amending articles of Incorporation.
 6. Changing corporate name.
 7. Changing corporate headquarters.
 8. Dissolution.
 9. Assessments of stock.
 10. Judgment against and sale of corporate franchises.
 11. Examination of corporations, etc.

ARTICLE I. THE CREATION OF CORPORATIONS.

- Sec. 2850. Corporation defined.
 2851. Power to alter or repeal, reserved to legislature.
 2852. Due incorporation cannot be questioned collaterally.
 2853. Corporate name required; misnomer does not invalidate instrument.
 2854. Corporations classified.
 2855. Public; how regulated.
 2856. Private; for what purposes may be formed.
 2857. Articles.
 2858. Corporations, how formed.
 2861. Contents of articles.
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 2864. Subscribed by three persons.
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 2867. Receipt of treasurer to be filed.
 2868. Certificate of secretary of State.
 2869. Record by secretary.
 2870. Copy of articles shall be prima facie evidence.
 2871. Stockholders and members defined.
 2872. Stock of minors, etc., how represented.

§ 2850. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

See Const., art. VII, § 144. Term of existence must be stated in articles. § 2861. And is limited to twenty years. § 2882. But may be extended. § 2909. "Person" includes corporations. §§ 5121, 7727, 7728.

§ 2851. Every grant of corporate power is subject to alteration, suspension or repeal in the discretion of the legislative assembly.

See Const., art. I, §§ 16, 20; art. VII, § 131; Code, § 2943.

§ 2852. The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers shall not be inquired into collaterally in any private action to which such de facto corporation may be a party.

Certified copy of articles prima facie evidence. § 2870; see annotations to § 2892, Laws of S. Dak.

§ 2853. Every corporation must have a corporate name which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended.

Corporate name, how changed. § 2910. Name must be stated in articles. § 2861. Succession by corporate name. § 2882.

§ 2854. Corporations are either:

1. Public; or,
2. Private.

See Const., art. VII, § 144.

§ 2855. Public corporations are formed or organized for the government of a portion of the State. Such corporations are regulated by the Political Code or by local statute.

See Const., art. VII, § 144.

§ 2856. All corporations not public are private. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

See Const., art. VII, § 144. Must be formed under general laws. *Id.*, § 131.

§ 2857. The instrument by which a private corporation is formed is called "Articles of Incorporation."

See §§ 2861-2863.

§ 2858. Private corporations may be formed by the voluntary association of three or more persons, except as otherwise expressly provided, upon complying with the provisions of this chapter.

See Const., art. VII, § 131; art. II, § 69.

[Partnership changed to a corporation, the existence of a corporation worked so instantly the dissolution of partnership. *Hennessey v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.]

All the capital stock of the corporation that belongs to same parties should furnish the firm's capital stock. *Id.*]

§ 2861. The articles of incorporation must set forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees and the names and residences of those who are to serve until their successors are elected and qualified.
6. If there is a capital stock, its amount and the number of shares into which it is divided.

Term of existence not limited. § 2850. Corporate name, how changed. § 2910. Powers confined to purposes of creation. Const., art. VII, § 137; see §§ 2862, 2863. Amendment of articles. §§ 2908, 2909.

[Evidence sufficient to establish existence of de facto corporation. *Mining Co. v. Noonan*, 3 Dak. 189; s. c., 14 N. W. Rep. 426.]

§ 2862. The articles of any corporation formed for the purpose of constructing wagon roads, telegraph or telephone lines must also state:

1. The place from and to which the road or line is intended to be run and branches contemplated.

2. The counties through which it is intended to be run.

3. The estimated length and cost of the road or line.

§ 2863. The articles of incorporation of railway corporations shall be in compliance with section 2944; of insurance corporations, in compliance with section 3088; of fraternal associations or corporations, in compliance with section 3184; of banking corporations, in compliance with section 3227.

§ 2864. The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this State, and acknowledged by each before some officer authorized to take acknowledgments of conveyances of real property.

§ 2865. Every corporation for profit except building and loan associations, county mutual insurance companies, corporations for the manufacture of dairy products, agricultural fair corporations, and corporations whose capital stock does not exceed five thousand dollars formed for the purchase and maintenance of male animals for the improvement of stock, shall at or before the filing of the articles of incorporation pay into the State treasury, the sum of fifty dollars for the first fifty thousand dollars, or fraction thereof, of the capital stock of such corporation, and the further sum of five dollars for every additional ten thousand dollars, or fraction thereof, of its capital stock.

§ 2866. No increase of the capital stock of any corporation heretofore or hereafter formed, other than those excepted in the last section, shall be valid until such corporation shall have paid into the State treasury the sum of five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation.

Increase or diminishing capital stock. Const., art. VII, § 138; Code, § 2905.

§ 2867. It shall be the duty of every corporation hereafter organized, or which shall hereafter increase its capital stock, other than those excepted in section 2865, to file with the secretary of State at the time of filing the articles of incorporation, or instrument evidencing such increase, a duplicate receipt of the State treasurer for the payments herein required to be made, which receipt, in duplicate, it is made the duty of such treasurer to furnish.

See Const., art. VII, § 138; Code, §§ 2866, 2905.

§ 2868. Upon the filing of the articles of incorporation with the secretary of State he shall issue to the corporation over the great seal of the State a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body

Stock; subscriptions; certificates; transfers — Civ. Code, §§ 2869-2877.

politic and corporate by the name and for the purposes stated in said articles.

§ 2869. Upon the filing of any articles of incorporation as in the last section is prescribed the secretary of State shall cause the same to be recorded in a book to be kept in his office for that purpose to be called the "book of corporations," with the date of filing.

§ 2870. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of State, must be received in all courts and other places as prima facie evidence of the facts therein stated and of the existence of such corporation.

Corporate existence cannot be questioned collaterally. § 2872.

§ 2871. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock the corporators and their successors are called members.

Personal liability of stockholders. § 2902. Dividends belong to whom. § 2881.

[Rights and duties of stockholders holding a majority of subscribed capital stock. *Hennessy v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.]

§ 2872. The shares of stock of an estate of a minor or insane person may at all elections and meetings of a corporation be represented by his guardian, and of a deceased person, by his executor or administrator.

ARTICLE II. CORPORATE STOCK.

Sec. 2873. Subscription may be enforced.

2874. Books open for subscriptions.

2875. Stock forfeited or subscription recovered.

2876. Stock negotiable; how indorsed.

2877. Stock and bonds not to be issued except for value.

2878. Note not to be considered as payment.

2879. Excess void.

2880. Corporation may own its own stock.

2881. Dividend belongs to whom.

§ 2873. A subscription to the stock of a corporation about to be formed is to be held for the benefit of the corporation when it is formed and may be enforced.

§ 2874. After the secretary of State issues the certificate of incorporation as provided in section 2868, the directors named in the articles of incorporation must proceed in the manner specified or provided in their by-laws, or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; and to levy and collect assessments thereon in the manner provided by article six of this chapter.

Fraud in subscriptions. § 7515. In procuring organization. § 7516.

§ 2875. When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both.

§ 2876. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for the issuance of certificates prior to the full payment under such restrictions and for such purposes as their by-laws provide. Upon all certificates of stock which are fully paid up, issued by a corporation, shall be indorsed the words "fully paid up." When certificates of stock are issued before they are fully paid up the secretary shall, before the same are issued, indorse thereon the amount which has been paid. No corporation shall issue any certificates of stock under an agreement or with the understanding that the full par value shall not be paid. Any officer of a corporation who issues certificates of stock in violation of the provisions of this chapter, or who has knowledge thereof, and does not at the time dissent therefrom in writing shall be liable to the creditors of the corporation and to purchasers in good faith of such stock for all damages they may sustain thereby. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, such shares of stock are personal property and may be transferred by indorsement by the signature of the proprietor or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares and the date of the transfer.

Capital stock is personal property for purposes of taxation, §§ 1176, 1178, 1181. Stock to be issued only for value. § 2877. Certificates limited. § 2879. Corporation may purchase its own stock. § 2880. Issuing false or canceled certificates, penalty. §§ 7425, 7426. Assessments on stock. §§ 2917-2935.

§ 2877. No corporation shall issue stock or bonds except for money, labor done or property, estimated at its true money value, actually received by it, and all the officers of a corporation who consent to the issuance of stock or bonds for labor or property in excess of its actual cash value, or who have knowledge thereof and do not at the time dissent therefrom in writing shall be jointly and severally liable to the creditors of such corporation for the difference between the actual cash value of such labor or property at the time such stock or bonds were issued

and the par value of the stock or bonds issued therefor.

See Const., art. VII, § 138.

§ 2878. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock; but the capital stock shall be paid in, either in cash, or in the manner provided in this article.

§ 2879. A corporation whose capital is limited by its articles of incorporation, either in amount or in the number of shares cannot issue valid certificates in excess of the limit thus prescribed.

§ 2880. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock from its surplus profits, or as provided in the article on assessments of stock or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimously decide upon.

[Question of fraud as to creditors on part of a corporation by purchasing its own stock, borrowing money for such purpose without authority and confessing judgment therefor. *A. & W. Co. v. Deyette*, 59 N. W. Rep. 214.]

§ 2881. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

Dividends only from surplus profits. § 2891.

ARTICLE III. CORPORATE POWERS.

Sec. 2882. General powers of corporations.

2883. By-laws; by whom adopted.

2884. May provide for what.

2885. Record; certificates; repeal of by-laws.

2886. Election of directors.

2887. Same.

2888. Manner of voting.

2889. Number and power of directors.

2890. Organization and election of officers.

2891. Dividends only from profits; limitation of indebtedness; exception.

2892. Penalty for violating last section.

2893. False certificate, notice or entry by officer; penalty.

2894. Removal of directors.

2895. Quorum; proxy.

2896. Election failing.

2897. Application to district court for new election.

2898. Where meeting held.

2899. Same.

2900. How called.

2901. When called by justice.

2902. Personal liability of stockholders; trust funds not liable.

2903. When uncalled meeting valid.

2904. Non-resident transfers.

2905. Capital stock, how increased or diminished.

2906. Bonds, how issued.

a corporation for profit, perpetually, subject to the power of the legislative assembly as hereinbefore declared.

Corporate name required. § 2853. And must be stated in articles. § 2861. How changed. § 2910. Period of existence may be continued. § 2909.

2. To sue and be sued in any court.

Foreign corporation may sue and be sued. § 5756. Must keep resident agent for service. §§ 3263, 3265. Action against extinct foreign corporation. § 5757. Actions by and against corporations. §§ 5753-5757. Against insolvent corporations. §§ 5761 et seq. By the State against corporations. §§ 5775 et seq. Averments as to incorporation. § 5753. Not necessary to prove, when. § 5754. Cannot be attacked collaterally. § 2852. Copy of articles prima facie evidence. § 2870. Franchise salable to satisfy judgment. §§ 2936 et seq. Service of summons on corporation. §§ 5252, 5254. Injunction to suspend business. § 5349.

3. To make and use a common seal and alter the same at pleasure.

Seal necessary to transfer by corporation. § 3535.

4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding in any case any amount limited by law.

Transfer of real estate. §§ 3532 et seq. A corporation cannot take under a will. § 3643.

5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

Employee making false entries, etc., penalty. § 7435. Embezzlement by. § 7462.

6. To make by-laws not inconsistent with the law of the land for the management of its property, the regulation of its affairs and for the transfer of its stock.

By-laws may provide for issuance of certificates. § 2876. May empower officers to make transfers of real estate. § 3532. Are adopted by whom. § 2883. May provide for what. § 2884. Book of, must be kept. § 2885.

7. To admit stockholders or members and to sell their stock or shares for the payment of assessments or installments.

Assessments of stock. §§ 2917-2935.

8. To enter into any obligations or contract essential to the transacting of its ordi-

§ 2882. Every corporation as such has power:

1. To have succession by its corporate name for the period limited, not exceeding twenty years, if a corporation for profit; and if not

nary affairs, or for the purposes of the corporation.

Combinations and trusts prohibited. §§ 7480 et seq.

9. The powers of banking corporations are prescribed in sections 3229 and 3230.

In addition to the above-enumerated powers and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

See Const., art. VII, § 137.

§ 2883. Every corporation formed under this chapter must within one month after filing articles of incorporation adopt a code of by-laws for its government not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there is no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called notice thereof shall be published two times, once in each week, for two successive weeks in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published at the seat of the government. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there is no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

See § 2882, subd. 6, cross-references.

§ 2884. A corporation may by its by-laws, when no other provision is specially made, provide:

1. The time, place and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election for directors and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding in any case one hundred dollars for any one offense.

See § 2882, subd. 6, cross-references.

§ 2885. All by-laws adopted must be certified by a majority of the directors and

secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays.

The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws and to adopt new by-laws made by a similar vote at any such meeting be delegated to the board of directors. The power when delegated may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws and immediately after them, and shall not take effect until so copied. If any by-law is repealed, the fact of the repeal with the date of the meeting at which the repeal was enacted shall be stated in the said book and until so stated the repeal shall not take effect.

See § 2882, subd. 6, cross-references.

§ 2886. The directors of a corporation must be elected annually by the stockholders or members unless otherwise expressly provided, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of election of directors must be given for the same time and in the same manner as provided in section 2883.

See Const., art. VII, § 135, and §§ 2887, 2888. Stock of minors, etc., voted by whom. § 2872. Removal of director. § 2891. Failure to elect. § 2806. "Director" defined. § 7536. See note to § 2923, Laws of S. Dak., and note to § 2889, post.

§ 2887. At the first meeting at which by-laws are adopted, or at such subsequent meeting as may then be designated, directors must be elected to hold their offices for one year and until their successors are elected and qualified.

See Const., art. VII, § 135, and § 2889, note.

§ 2888. All elections of directors must be by ballot and every stockholder shall have the right to vote, in person or by proxy, the number of shares standing in his name as provided in section 2895, for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of di-

Board of directors; liabilities; false certificates, etc.—Civ. Code, §§ 2889-2893.

rectors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The persons receiving the highest number of votes shall be declared elected.

See Const., art. VII, § 135. See note to next section.

§ 2889. (As amended February 9, 1897; L. 1897, ch. 58.) Unless otherwise expressly provided, the corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or, when there is no capital stock, then from the members of such corporation, and at least one of such directors must be a resident in good faith of this State, and the removal of any such resident director from the State shall create a vacancy in his office. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of directors, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

See § 2886, cross-references. Frauds in management. §§ 7515-7536. See note to § 2926, Laws of S. Dak.

[The pledgee of stock in whose name it stands on corporate records has a right to vote the stock at meeting to elect directors. In re Argus Co., 1 N. Dak. 434; s. c., 48 N. W. Rep. 347.

Pledgor has no right to vote such stock, but a court of equity will, in a proper case, compel pledgee to give pledgor a proxy. Id.

One not appearing as a stockholder on corporate records is not eligible to office of director; one who still so appears is eligible, and may vote notwithstanding he has assigned his stock. *Hennesy v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.

A vote of stockholders representing majority of stock is necessary to choice of directors. There being no such vote, election is illegal, and new election will be ordered. Id. One may vote stock and be director, though assignment of stock was made to him for that sole purpose, provided it be not in furtherance of fraudulent scheme. Id.]

§ 2890. Immediately after their election the directors must organize and elect a president of the corporation, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such

board, made when duly assembled, is valid as a corporate act.

Actions against officers; for what and by whom brought. §§ 5758, 5759.

§ 2891. The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond the subscribed capital stock, or reduce or increase the capital stock, except as specially provided by law; Provided, however, That the above limitation as to the creation of debts, shall not apply to the policy risks of insurance companies on which no loss has occurred, or the notes, bonds or debentures of any loan or trust company, organized under the provisions of this chapter when the payment of such notes, bonds or debentures shall be secured by the actual transfer of real estate by trust deed or mortgage for the payment of such notes, bonds or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds or debentures; Provided, further, That such limitation shall not apply to any loan or trust company's guarantee of payment after transfer of any note, bond or debenture when the same is secured by trust deed or mortgage as above stated.

Dividend belongs to whom. § 2881.

§ 2892. For a violation of the provisions of the last section the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen, are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any action against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

§ 2893. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice or entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any

Removal of directors; elections; meetings — Civ. Code, §§ 2894-2901.

of the acts herein designated, they shall be jointly and severally liable.

§ 2894. No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting and by whose order it was called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 2883, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting.

Election of directors. §§ 2886-2888.

§ 2895. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented either in person or by proxy in writing. Every person acting therein in person, or by proxy, or representative must be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

See Const., art. VII, § 135; Code, § 2888.

§ 2896. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a

meeting may be called by the stockholders as provided in section 2894.

[See *Hennessey v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.]

§ 2897. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

§ 2898. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business; Provided, That the meetings of the board of directors of a railway corporation may be held at the business office of such corporation without the State as well as its principal place of business within the State.

Change of corporate headquarters. § 2911.

§ 2899. The meetings of the board of directors of any private corporation created and existing or which may hereafter be created under and by virtue of the laws of the State of North Dakota, having one or more directors, resident of the State or having duly appointed an agent resident in this State upon whom service may be made, may be held at any place mentioned and provided in its by-laws either within or without the State.

§ 2900. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary on the order of the president, or if there is none, on the order of two directors.

§ 2901. Whenever from any cause there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 2902. Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any or all of the stockholders of a corporation whose shares have not been fully paid up, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability.

Assessments of stock. §§ 2917 et seq. See note to § 2933, Laws of South Dakota.

§ 2903. When all the stockholders or members of a corporation are present at any meeting, however called or notified and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed; but this section shall not be construed to authorize the stock or bonded indebtedness of corporations to be increased, except at a meeting held after sixty days' notice. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such

other business as might lawfully be transacted at regular meetings of the corporation.

§ 2904. When the shares of stock in a corporation are owned by parties residing out of the State, the president, secretary and directors of the corporation before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence is not furnished, may require from the attorney, agent or claimant a bond of indemnity with two sureties satisfactory to the officers of the corporation or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer, and if such affidavit, or other evidence, or bond is not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

§ 2905. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors as follows:

1. Notice of the time and place of meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock must be personally served on each stockholder resident in the State sixty days prior to the time of such meeting at his place of residence, if known; and the notice must be given to stockholders whose place of residence is unknown or who are not residents in the State by the publication of such notice in a newspaper published in the county where the principal office of the corporation is situated, not less than once a week for sixty days prior to such meeting.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or to the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution before it can be effected.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the secretary of State, there to be re-

Issue of bonds; corporate records; amendments — Civ. Code, §§ 2906-2909.

corded in the book of corporations, and thereupon the capital stock shall be so increased or diminished.

See Const., art. VII, § 138.

§ 2906. At a meeting of the stockholders of the corporation called for that purpose by the directors a corporation may issue bonds as follows:

1. Notice of the time and place of meeting, stating its object and the amount of bonds to be issued, must be served in the manner provided in the last section.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the issuance of bonds.

3. The certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount of bonds to be issued, the amount of stock represented at the meeting, and the vote by which the object was accomplished, which certificate shall be filed in the office of the secretary of State, there to be recorded in the books of corporations. A violation of any of the provisions of this section shall render every director, officer and stockholder of the corporation, who had knowledge of such violation and did not dissent therefrom and cause his dissent to be entered at large upon the journal of the corporation, jointly and severally liable for all debts so created.

See Const., art. VII, § 138.

ARTICLE IV. CORPORATE RECORDS.

Sec. 2907. Record of business transaction; stock-book open to inspection.

§ 2907. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized and the notice thereof given. The record must embrace every act done, or ordered to be done; who were present and who were absent; and, if requested by any director, member or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition and a record thereof made. On a similar request the protest of any director, member or stockholder to any action or proposed action must be entered in full; all such records shall be open to the inspection of any director, member, stockholder or creditor of the corporation. In addition to the records above required to be kept corporations for profit must keep a book to be known as the "stock and transfer book," in which must be kept a record of all stock;

the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom, and all such other records as the by-laws prescribe.

* * * * *
False entries in corporate books, penalty. §§ 7434, 7435.

ARTICLE V. AMENDING ARTICLES OF INCORPORATION.

Sec. 2908. Articles, how amended.
2909. Renewal of corporate existence.

§ 2908. Any private corporation created or existing, or which may hereafter be created under the laws of the State of North Dakota, may amend or change its articles of incorporation at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of meeting stating its object must be served in the manner prescribed in section 2905.

2. At least two-thirds of the entire capital stock must be represented by vote in favor of the amendment or change in the articles of incorporation.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the articles to be amended or changed, the amount of stock or the number of members represented at the meeting and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of State, there to be recorded in the book of corporations, and thereupon the articles shall be so amended.

5. The written assent of the holders of three-fourths of the capital stock or members shall be as effectual to authorize the change or amendment of the articles of incorporation as if a meeting of the stockholders, as prescribed by this section, was called and held and upon such written assent the directors may proceed to make the certificate to the secretary of State as herein provided.

Articles must contain what. § 2861.

§ 2909. Any private corporation now existing in this State or which may hereafter be created under the laws of this State may at any time prior to the expiration of the period of its corporate existence as limited by its articles of incorporation or by this chapter renew the term of its corporate existence for another term of years, not exceeding the period limited by law, by amending its articles of incorporation in the manner and upon the notice prescribed in section 2908.

Limit of existence twenty years. § 2882.

ARTICLE VI. CHANGING CORPORATE NAME.

Sec. 2910. Corporate name, how changed.

§ 2910. Every private corporation created and existing, or which may hereafter be created under the laws of the State of North Dakota, may change its name at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of meeting, stating its object must be served in the manner prescribed in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of name.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the name adopted as the new name of such corporation, the amount of stock or the numbers of members represented at the meeting and the vote by which the change of name was accomplished.

4. The certificate must be filed in the office of the secretary of State, there to be recorded in the book of corporations, and thereupon the name of such corporation shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the change of name as if a meeting was called and held, as prescribed by this section, and upon such written assent the president and secretary may proceed to make the certificate to the secretary of State as herein provided.

6. Every proceeding, act, liability or thing done, undertaken, or incurred by or on behalf of the corporation, under its former name, shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged.

See § 2853, § 2882, and note.

ARTICLE VII. CHANGING CORPORATE HEADQUARTERS.

Sec. 2911. Corporate headquarters, how changed.

§ 2911. Every private corporation created and existing, or which may hereafter be created under the laws of the State of North Dakota, may change the place where its principal business is to be transacted at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of meeting, stating its object must be served in the manner specified in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of the place where the principal business of the corporation is to be transacted.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a com-

pliance with the requirements of this section, the place to which the place where the principal business of the corporation is to be transacted has been changed, the amount of stock or the number of the members represented at the meeting, and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of State, there to be recorded in the book of corporations, and thereupon the place where the principal business of the corporation is to be transacted shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize such change as if a meeting was called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

ARTICLE VIII. DISSOLUTION OF CORPORATIONS.

Sec. 2912. Dissolution; involuntary; voluntary.

2913. Lapse by non-user.

2914. Directors trustees on dissolution.

2915. Liability of trustees.

2916. Corporation, how revived.

§ 2912. A corporation is dissolved:

1. By the expiration of the time limited by its articles of incorporation.

2. Its involuntary dissolution is provided for in chapter 26 of the Code of Civil Procedure.

3. If voluntary, its dissolution may be effected in the following manner:

(a) A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

(b) The application must be in writing and must set forth, that at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the corporation have been satisfied and discharged.

(c) The application must be signed by a majority of the board of directors, trustees or other officers having the management of the affairs of the corporation and must be verified in the same manner as a complaint in a civil action.

(d) If the court is satisfied that the application is in conformity with this article, it must order the application to be filed and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county and if there are none such, then by advertisement posted in five of the principal places in the county.

(e) At any time before the expiration of the time of publication any person may file his objection to the application.

(f) After the time of publication has expired the court may upon five days' notice to the persons who have filed objections or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

(g) The application, notices and proof of publication, objections, if any, and declaration of dissolution constitute the judgment-roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 2913. If a corporation does not organize and commence the transaction of business or the construction of its works within one year from the date of its incorporation, its corporate powers cease.

§ 2914. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation and to collect and pay debts and divide among the stockholders the property which remained after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

§ 2915. The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation to the extent of its property in their hands.

§ 2916. A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE IX. ASSESSMENTS OF STOCK.

- Sec. 2917. When levied.
 2918. Limitation of.
 2919. When new assessment can be levied.
 2920. Requisites of assessments.
 2921. Form of notice.
 2922. Service of notice.
 2923. Notice of delinquency.
 2924. Contents of notice.
 2925. Publication of notice.
 2926. Jurisdiction to sell stock.
 2927. Manner of sales.
 2928. Highest bidder, who is.
 2929. Corporation may bid, when.
 2930. Title to stock in corporation.
 2931. Time extended by publication.
 2932. Irregularities do not invalidate.
 2933. Redemption; limitation of.
 2934. Proof of publication and sale.
 2935. Stock may be declared delinquent or action brought.

§ 2917. The directors of any corporation formed or existing under the laws of this State, after one-fourth of its capital stock has been subscribed, may for the purpose of paying expenses, conducting business or paying debts levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

§ 2918. No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 2919. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or.

3. The assessment falls within the provisions of either the first, second or third subdivision of section 2918.

§ 2920. Every order levying an assessment must specify the amount thereof, when, to whom and where payable, fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 2921. Upon the making of the order the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of principal place of business.)

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction and unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment together with the costs of advertising and expenses of sale.

(Signature of secretary with location of office.)

§ 2922. The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place or residence, if known, and if not

known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper is published therein. If the works of the corporation are not within a State or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there is one, and if there is none, then in a newspaper published in an adjoining county.

§ 2923. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published a notice substantially in the following form:

(Name in full. Location of principal place of business.)

Notice. There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments levied previous thereto, if any,) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary with location of office.)

§ 2924. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon together with the fact that the certificate for such shares has not been issued must be stated.

§ 2925. The notice when published in a daily paper must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 2926. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 2927. On the day, at the place and at the time appointed in the notice of sale the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

§ 2928. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

§ 2929. If at the sale of stock no bidder offers the amount of the assessment and costs and charges due the same may be bid in and purchased by the corporation through the secretary, president or any director thereof at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation and an entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 2930. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

§ 2931. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension

or postponement is appended to and published with the notice to which the order relates.

§ 2932. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings except the levying of the assessment, are void and publication must be begun anew.

§ 2933. No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale is made.

§ 2934. The publication of notice required by this article may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation and copies of the same certified by the secretary thereof are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

§ 2935. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

ARTICLE X. JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

Sec. 2936. Franchise salable to satisfy judgment; no exemption.

2937. Certificate of purchase; rights of purchaser.

2938. Further rights.

2939. Other powers of corporations retained.

2940. Franchise may be redeemed.

2941. Where sold.

§ 2936. For the satisfaction of any judgment against a corporation authorized to receive tolls its franchise and all the rights and privileges thereof may be levied upon and sold under execution in the same manner and with the same effect as any other property, but without any exemption.

§ 2937. The purchaser at the sale must receive a certificate of purchase of the franchise and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof and must thereafter conduct the business of such corporation with all its powers and privileges and subject to all its liabilities, until the redemption of the same as hereinafter provided.

§ 2938. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause occurring during the time he holds the same and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 2939. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties and is liable to the same penalties and forfeitures as before such sale.

§ 2940. The corporation may at any time within one year after such sale redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor with twelve per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation as if no such sale had been made.

§ 2941. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes, are paid is situated.

ARTICLE XI. EXAMINATION OF CORPORATIONS.

Sec. 2942. Examination by legislative assembly.

2943. Power reserved by legislative assembly.

§ 2942. The legislative assembly or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times; and for that purpose any committee appointed by the said assembly or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the

affairs and condition thereof, and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition and compel the production of all keys, books, papers and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe.

§ 2943. The legislative assembly may at any time amend or repeal this chapter, or any article or section thereof and dissolve all corporations thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against such corporation, its stockholders or officers, for any liability which has been previously incurred.

See Const., art. I, § 16; art. VII, §§ 131, 133; Code, § 2851.

CHAPTER XV.

Mining and Manufacturing Corporations, Etc.

Sec. 3154. How formed; term of existence.

3155. Purpose must be stated; cannot loan to stockholder; penalty.

3156. Accounts; publicity; statement.

3157. Stockholders liable for labor.

3158. Annual report.

3159. Demand for statement; penalty for refusal.

3160. Out of State; main office in State.

3161. Liability of directors.

§ 3154. Corporations for mining, manufacturing and other industrial pursuits may be formed as provided in chapter eleven; and such corporations have all the rights and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

§ 3155. The purposes for which any such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation, and it must not appropriate its funds to any other purpose nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation is made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan or misappropriation and interest and for all the debts of the corporation contracted before the repayment of the sums so loaned or misappropriated.

§ 3156. Regular books of accounts of all the business of such corporation must be kept, which with the vouchers shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made by order of the directors and laid before the stockholders.

§ 3157. The stockholders of any corporation formed for the purposes mentioned in this chapter shall be jointly and severally liable in their individual capacities for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied; Provided, Such action is commenced within four months; And provided always, That if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally or any number of them and recover in such action the ratable amount due from the person or persons so sued.

§ 3158. Every such corporation shall annually within twenty days from the first day of January make a report which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid and the net amount of profits. The said report must be signed by the president and a majority of the directors and be verified by the oath of the president or secretary of the corporation and filed in the office of the register of deeds of the county where the business of the corporation is carried on; any person who wilfully neglects, fails or refuses to make, sign or publish the report as provided in this section shall be guilty of a misdemeanor.

§ 3159. Whenever any person or persons owning twenty per cent. of the capital stock of any corporation formed for the purposes mentioned in this chapter shall present a written request to the treasurer thereof that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also at the same time place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglects or refuses to comply with the provisions of this section he

Existing corporations; foreign corporations — Civ. Code, §§ 3160, 3161, 3259-3262.

shall forfeit and pay to the person presenting such written request the sum of fifty dollars and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action.

§ 3160. Any corporation formed for the purposes mentioned in this chapter may provide in the articles of incorporation for having a business office without this State at any place within the United States and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this State must have its main office for the transaction of business within this State to be also designated in such articles.

§ 3161. If any such corporation shall willfully violate any of the provisions of this chapter relating or applying to such corporation and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute for all debts contracted after such violation.

CHAPTER XXI.

Existing Corporations Electing to Continue Under this Chapter.

Sec. 3259. Proceedings when existing corporations elect to continue.

3260. When individuals must comply with law of corporations.

§ 3259. Any corporation existing at the passage of this act, formed under the laws of this State, may elect to continue its existence under the provisions of the ten preceding chapters applicable thereto and it may at any time thereafter make such choice or election at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is so made, signed by the chairman and secretary of the meeting and a majority of the directors and trustees must be filed in the office of the secretary of State and thereafter the corporation shall continue its existence under the provisions of the ten preceding chapters which are applicable thereto and shall possess all the rights and powers and be subject to all the

obligations, restrictions and limitations prescribed thereby.

See Const., art. VII, §§ 132, 133.

§ 3260. Any person or association of persons now engaged in or that may hereafter engage in the construction of any railroad, street railway, telegraph or telephone lines, ditch for conveying water, or other like work of internal improvement shall be required to comply strictly with all the provisions of the preceding ten chapters in the same manner as corporations, so far as the same can be done. A failure of any such person or association of persons to comply as aforesaid shall work a forfeiture of any and all rights he or they may have acquired in accordance with law.

See Const., art. VII, §§ 132, 133.

CHAPTER XXII.

Duties of Foreign Corporations.

Sec. 3261. Conditions of foreign corporation doing business in this State.

3262. Record.

3263. Secretary of State to be appointed attorney for process.

3264. Liability for failure to comply.

3265. Failure to comply renders all contracts void.

§ 3261. No foreign corporation, association or joint-stock company, except an insurance company, shall transact any business within this State, or acquire, hold or dispose of property, real or personal, within this State, until such corporation shall have filed in the office of the secretary of State a duly authenticated copy of its charter or articles of incorporation and shall have complied with the provisions of this chapter; Provided, That the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely.

See Const., art. VII, § 136. See note to § 3190, Laws of South Dakota.

[Acceptance of notes within this territory by a foreign corporation, in settlement for sales of merchandise made in its own State, is not such a transaction as is inhibited by section 567. *Mfg. Co. v. Foster*, 4 Dak. 329; s. c., 30 N. W. Rep. 166.

Foreign corporations, like other non-residents, are allowed to sue upon furnishing security for costs; their capacity to sue is not affected by inhibition contained in sections 567-569, which extends only to the ordinary transaction of business. *Mach. Co. v. Moore*, 2 Dak. 281; s. c., 8 N. W. Rep. 131; *Mfg. Co. v. Foster*, 4 Dak. 329; s. c., 30 N. W. Rep. 166.

Foreign corporation plaintiff need not allege in complaint that it has filed copy of its articles and appointment of agent for process; complaint without such allegation held sufficient. *Mach. Co. v. Moore*, supra.

Defense that foreign corporation has no authority to sue must be raised by answer, not by demurrer. *Id.*; *Lumber Co. v. Keefe*, 6 Dak. 160; s. c., 41 N. W. Rep. 743.]

§ 3262. Such charter or articles of incorporation shall be recorded in a book to be

Foreign corporations; transfers of real property — Civ. Code, §§ 3263-3265, 3532-3535.

kept by the secretary of this State for that purpose.

§ 3263. Such corporation, association or joint-stock company shall by a duly executed instrument filed in the office of the secretary of State constitute and appoint the secretary of State and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served upon it personally in this State and that such appointment shall continue in force irrevocable so long as any liability of the corporation, association or joint-stock company remains outstanding in this State. Service upon such attorney shall be deemed sufficient service upon the corporation, association or joint-stock company. Whenever any process against any foreign corporation, association or joint-stock company, doing business in this State, shall be served upon the secretary of State he shall forthwith mail a copy of such process, postage prepaid, and directed to such corporation, association or joint-stock company at its principal place of business, or if it is a corporation, association or joint-stock company of a foreign country, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the secretary of State. As a condition of valid and effectual service the plaintiff shall pay to the secretary of State at the time of the service the sum of two dollars which the plaintiff shall recover as taxable costs if he prevails in his action. The secretary of State shall keep a record of all such process which shall show the time and hour of service.

See note to § 3192, Laws of South Dakota. Foreign corporation may sue and defend. § 5756. Service of summons on. §§ 5252, 5254.

[Sections 3261 and 3263 do not render contracts entered into with foreign corporations before compliance with terms of said sections, unenforceable and void. *Mill Co. v. Bartlett*, 3 N. Dak. 138; s. c., 54 N. W. Rep. 544.

Parties who have contracted with such foreign corporation as a corporation, and received and retained benefits of such contract, cannot raise the question of non-compliance with terms of said sections. *Id.*]

§ 3264. Any failure to comply with the provisions of the last three sections and with section 3116 of this Code shall render each and every officer, agent and stockholder of any corporation, association or joint-stock company failing to comply therewith, jointly and severally liable on any and all contracts of such corporation, association or joint-stock company made within this State during the time such corporation, association or joint-stock company is so in default.

§ 3265. Every contract made by or on behalf of any corporation, association or joint-stock company, doing business in this State, without first having complied with the provisions of section 3116, if an insurance company, or with the provisions of sections 3261 and 3263, if other than an insurance company, shall be wholly void on behalf of such corporation, association or joint-stock company and its assigns, but any contract so made in violation of the provisions of this section may be enforced against such corporation, association or joint-stock company.

CHAPTER XXXV.

Transfer of Real Property.

ARTICLE I. MODE OF TRANSFER.

Sec. 3532. By-laws may empower officers to execute transfers.

3533. Who executes, if not so empowered.

3534. Prior instruments legalized.

3535. Corporate signatures.

§ 3532. Any foreign or domestic corporation may in its by-laws empower any one or more of its officers severally or conjointly to execute and acknowledge in its behalf conveyances, transfers, assignments, releases, satisfactions or other instruments affecting liens upon, titles to or interests in real estate.

[To charge a corporation vendee with knowledge of outstanding equities in the land, on the ground that its managing officer had knowledge of it, is not sufficient to show that such officer obtained such knowledge more than three years before the organization of the corporation. *Red River Valley Land & Investment Co. v. Smith*, 74 N. W. Rep. 194.]

§ 3533. In the absence of any by-laws the president or secretary of any corporation, and the president, secretary, treasurer or cashier of any loan, trust or banking corporation may execute and acknowledge such instruments when authorized by resolution of the board of directors.

§ 3534. All instruments affecting liens upon, titles to or interests in real estate heretofore executed and acknowledged in good faith by the treasurer or cashier in behalf of any loan, trust or banking corporation are declared valid and effectual to the same extent as they would have been had the last two sections been in force at the time of their execution.

§ 3535. The signature of a corporation to any instrument mentioned in section 3532 shall be as follows:

..... (full name of corporation.)

By (some officer authorized by resolution or the by-laws of the corporation to execute and acknowledge such instrument.)

..... (official designation of persons signing).

Attest:

(Seal) Secretary.

Misnomer does not invalidate an instrument. § 2853.

Commencement of actions — Code Civ. Pro., §§ 5252, 5254.

CHAPTER XL.**Wills.**

Sec. 3643. Corporation cannot take under a will.

§ 3643. * * * No corporation can take under a will, unless expressly authorized by statute so to take.

CHAPTER XLIII.**Contracts.****ARTICLE VI. MANNER OF CREATING CONTRACTS.**

Sec. 3891. How seal affixed.

§ 3891. A corporate or official seal may be affixed to an instrument by a mere impres-

sion upon the paper or other material on which such instrument is written.

CHAPTER XCIX.**Definitions.**

Sec. 5121. "Person" defined.

§ 5121. The word "person" except when used by way of contract, includes not only human beings, but bodies politic or corporate.

"Person" defined. §§ 7727, 7728. "Corporation" defined. § 2850.

CODE OF CIVIL PROCEDURE.**CHAPTER VII.****Manner of Commencing Civil Actions.**

Sec. 5252. Summons, how served.

5254. Service by publication; cases and manner.

§ 5252. The summons shall be served by delivering a copy thereof as follows:

* * * * *

4. If the defendant is a domestic corporation organized under the laws of the territory of Dakota, or of this State, to the president, or other head of the corporation, secretary, cashier, treasurer, a director or managing or authorized agent thereof, and such service may be made within or without this State. In case the sheriff shall return the summons with his certificate that no such officer, director or agent can conveniently be found in his county, service may be made by leaving a copy of the summons at any office of such corporation within this State, with the person in charge of such office.

5. If the defendant is a foreign corporation, joint-stock company or association, to the secretary of State, unless the defendant is an insurance company, in which case, to the commissioner of insurance, or to the president, secretary, cashier, treasurer, a director or managing agent thereof, if within the State, doing business for the defendant.

6. In all cases when a foreign corporation, joint-stock company or association shall not have appointed either the secretary of State or the commissioner of insurance, as the case may be, as its lawful attorney upon whom service of process may be made, and such foreign corporation, joint-stock company or association cannot be personally served with such process according to the provisions of subdivision 5 of this section, it shall be lawful to serve such process on any person who shall be found within this

State acting as the agent of, or doing business for, such corporation, joint-stock company or association. But the service provided for in this subdivision can be made upon a foreign corporation, joint-stock company or association only when it has property within the State or the cause of action arose therein.

See § 2882, subd. 2, note. Duties of foreign corporations. §§ 5753-5757. See Law of South Dakota, § 4898, note. Service of summons on corporations. See Laws of 1897, appendix.

§ 5254. Service of the summons in an action may be made on any defendant by publication thereof upon filing a verified complaint thereon with the clerk of the district court of the county in which the action is commenced, setting forth a cause of action in favor of the plaintiff and against the defendant, and also filing an affidavit stating the place of defendant's residence, if known to the affiant, and if not known, stating that fact, and further stating:

* * * * *

2. That the defendant is a foreign corporation, joint-stock company or association and has no agent or person in this State upon whom service may be made under the provisions of section 5252; or,

* * * * *

CHAPTER IX.**Of the Provisional Remedies in Civil Actions.**

Art. 3. Injunction.
4. Attachment.
6. Receivers.

ARTICLE III. INJUNCTION.

Sec. 5349. Against corporation.

§ 5349. An injunction to suspend the general and ordinary business of a corporation

Attachments; receivers; costs—Code Civ. Pro., §§ 5352, 5362, 5366, 5403, 5597, 5741–5743.

must not be granted without due notice of the application therefor to the proper officer of the corporation, except when the State is a party to the proceeding.

ARTICLE IV. ATTACHMENT.

Sec. 5352. When attachment may issue.

5362. Attachment, how levied.

5366. Certificate of defendant's interest.

§ 5352. In an action on a contract or judgment for the recovery of money only, or for the wrongful conversion of personal property, the plaintiff at or after the commencement thereof may have the property of the defendant attached in the following cases:

1. When the defendant is not a resident of this State or is a foreign corporation.

§ 5362. A levy under a warrant of attachment must be made as follows:

4. Upon other personal property by leaving a copy of the warrant and a notice showing the property attached with the person holding the same; or, if it consists of a demand other than as specified in the last subdivision, with the person against whom it exists, or if it consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier or managing agent thereof. The lien of the attachment shall be effectual from the time when a levy is made in accordance with the foregoing provisions.

§ 5366. Upon the application of the sheriff, holding a warrant of attachment, the president or other head of a corporation, or the secretary, cashier or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note or other instrument for the payment of money belonging to the defendant, must furnish to the sheriff a certificate under his hand, specifying the rights or number of shares of the defendant in the stock of the corporation with all dividends declared or incumbrances thereon; or the amount, nature and description of the property held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires. If such officer, debtor or individual refuses to furnish such certificate, or if it is made to appear by affidavit or otherwise to the satisfaction of the court or judge thereof, that there is reason to suspect that any certificate given by him is untrue or that it fails to set forth fully the facts required to be shown thereby, he may be required by order of the court or judge to attend before him and be examined on oath concerning the same and obedience to such order may be enforced by proceedings as for a contempt.

ARTICLE VI. RECEIVERS.

Sec. 5403. Receiver may be appointed, when.

§ 5403. A receiver may be appointed by the court in which an action is pending, or by a judge thereof:

5. In the cases provided in this Code, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and in like cases within this State, of foreign corporations.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

CHAPTER XIII.

Of the Costs and Disbursements in Civil Actions.

Sec. 5597. Non-resident must furnish security.

§ 5597. In cases in which the plaintiff is a non-resident of the State or a foreign corporation, the plaintiff must before commencing such action furnish a sufficient surety for costs. The surety must be a resident of the county or subdivision where the action is to be brought and must be approved by the clerk. His obligation shall be complete by simply indorsing the summons or signing his name on the complaint as security for costs.

CHAPTER XXIV.

Actions in Place of Scire Facias, Quo Warranto and of Information in the Nature of Quo Warranto.

Sec. 5741. Remedies obtainable by action instead of writ.

5742. Who plaintiff.

5743. Against persons usurping franchise or corporate powers.

5744. Security for costs.

5750. Joinder of several claimants.

5751. Judgment.

§ 5741. The remedies formerly attainable by the writ of scire facias, the writ of quo warranto and proceedings by information in the nature of quo warranto may be obtained by civil action in the district court under the provisions of this chapter and of chapter 26.

§ 5742. When the action is prosecuted by the attorney-general, the State of North Dakota shall be plaintiff; when it is prosecuted by a private person, such person shall be the plaintiff therein and the proceedings in such action shall be the same as in an action by a private person, except as otherwise specially provided.

§ 5743. An action may be commenced by the State, or any person who has a special interest in the action, against the parties offending in the following cases:

Actions by and against corporations — Code Civ. Pro., §§ 5744, 5750-5758.

1. When any person shall usurp, intrude into or unlawfully hold or exercise * * * any franchise within this State, or any office in a corporation created by the authority of this State; or,

* * * * *

3. When any association or number of persons shall act within this State as a corporation without being duly incorporated.

§ 5744. Before commencing an action under this chapter, at the request of a party having an interest therein the attorney-general may require as a condition of commencing the same, that satisfactory security be given to indemnify the State against costs and expenses which may be incurred therein.

§ 5750. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 5751. When a defendant against whom such action shall have been commenced shall be adjudged guilty of usurping, intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that he be excluded from such office, franchise or privilege and also that the plaintiff recover costs against him. The court may also in its discretion impose upon such defendant a fine not exceeding five thousand dollars, which fine when collected shall be paid into the treasury of the State to the credit of the school fund.

CHAPTER XXVI.

Actions by and against Corporations.

- Art. 1. General provisions.
 2. Actions against officers.
 3. Actions against insolvent corporations.
 4. Proceedings to annul corporations.

ARTICLE I. GENERAL PROVISIONS.

Sec. 5753. Averments as to incorporation.

5754. When plaintiff not required to prove corporate existence.

5755. Misnomer waived, when.

5756. Foreign corporation may sue, defend, etc.

5757. Action against foreign corporation which has ceased to exist.

§ 5753. In an action by or against a corporation the complaint must aver that the plaintiff or defendant as the case may be is a corporation. If incorporated under any law of this State, that fact must be averred; if not so incorporated, an averment that it is a foreign corporation is sufficient. The complaint need not set forth or specially refer to any act or proceeding by or under which the corporation was formed.

Due incorporation cannot be questioned collaterally. § 2852. Copy of articles prima facie evidence. § 2870.

§ 5754. In an action by or against a corporation the plaintiff need not prove upon the trial the existence of the corporation, unless the answer is verified and contains an allegation, positive and not upon information and belief, that the plaintiff or the defendant, as the case may be, is not a corporation.

See § 5753, cross-references.

§ 5755. In actions or proceedings by or against corporations the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer or other pleading in the defendant's behalf.

§ 5756. A corporation created by or under the laws of any other State, territory or country or of the United States may prosecute or defend an action or proceeding in the courts of this State in the same manner as corporations created under the laws of this State, except as otherwise specially prescribed by law. But such foreign corporation cannot maintain any action founded upon an act or upon any liability or obligation, express or implied, arising out of or made or entered into in consideration of any act which the laws of this State forbid a corporation or any association of individuals to do without express authority.

See §§ 3261-3265. Service of summons on foreign corporation. § 5252.

§ 5757. An action for the recovery of money may be commenced and prosecuted to judgment against a corporation created by or under the laws of any other State, territory or country, or of the United States, although such corporation may have ceased from any cause whatever to act in whole or in part as a corporation, in the same manner as though it had not ceased to act; and satisfaction of the judgment may be enforced out of any property in this State which such corporation owns or has an interest in or would own or have an interest in, had the same not ceased to act as aforesaid, whether held or controlled by such corporation or by any person or agent for its use and benefit in whole or in part, or by a trustee or assignee for the creditors of such corporation appointed under or deriving his authority from the laws of any other State, territory or country, and an attachment issued in such action may be executed on any such property.

ARTICLE II. ACTIONS AGAINST OFFICERS.

Sec. 5758. For what may be maintained.

5759. Who may bring.

5760. Visitorial power not divested.

§ 5758. An action may be maintained against one or more trustees, directors, managers or other officers of a corporation to

Actions against officers; against insolvent corporations — Code Civ. Pro., §§ 5759-5764.

procure a judgment for the following purposes or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. Compelling them to pay to the corporation which they represent or to its creditors any money, and the value of any property which they have acquired to themselves or transferred to others or lost or wasted by violation of their duties, or to transfer any such property held by them to the corporation.

3. Suspending a defendant from exercising his office, when it appears that he has abused his trust.

4. Removing a defendant from his office upon proof or conviction of misconduct and directing a new election to be held by the body or board duly authorized to hold the same in order to fill the vacancy created by the removal or when there is no such body or board, or when all the members thereof are removed, directing the removal to be reported to the secretary of State, who may fill the vacancy.

5. Setting aside an alienation of property made by one or more trustees, directors, managers or other officers of a corporation, contrary to a provision of law or for a purpose foreign to the lawful business and objects of the corporation, when the alienee knew or had notice of the purpose of the alienation.

6. Restraining and preventing such alienation, when it is threatened, or when there is good reason to apprehend that it will be made.

§ 5759. An action may be commenced as prescribed in the last section by the State, or, except when the action is brought for the purpose specified in subdivisions 3 and 4 of said section, by a creditor of the corporation, or by a trustee, director, manager or other officer of the corporation, having a general superintendence of its concerns, or by a stockholder of the corporation upon the neglect or refusal of such officer so to do at the request of such stockholder.

§ 5760. This article does not divest or impair any visitatorial power over a corporation which is vested by a statute in a public officer or board.

ARTICLE III. ACTIONS AGAINST INSOLVENT CORPORATIONS.

Sec. 5761. Action to sequester corporate property, when maintainable.

5762. Action to dissolve, when maintainable.

5763. Who may commence.

5764. When injunction granted.

5765. Appointment and powers of receiver.

5766. Action proceeds to judgment though creditor settles.

5767. When stockholders, officers, etc., made defendants.

5768. When made defendants after judgment against corporations.

Sec. 5769. Action against stockholders, etc.

5770. Procedure therein.

5771. Distribution of property.

5772. When payments enforced against stockholders, etc.

5773. Suits by other creditors restrained; all creditors to be parties.

5774. Discovery compelled.

§ 5761. Whenever a judgment shall be obtained against any corporation incorporated under the laws of this State and an execution issued thereon shall have been returned unsatisfied in whole or in part, the judgment creditor or his legal representative may maintain an action to procure a judgment sequestrating the property of a corporation and providing for a distribution thereof.

§ 5762. In either of the following cases, an action to procure a judgment dissolving a corporation, created by or under the laws of this State, and forfeiting its corporate rights, privileges and franchises, may be maintained as prescribed in the next section:

1. When the corporation has remained insolvent for at least one year.

2. When it has neglected or refused for at least one year to pay and discharge its notes or other evidences of debt.

3. When it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers or power to make loans or pledges or deposits, or to make insurances, when it becomes insolvent or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt on demand, or has violated any provisions of the law by or under which it was incorporated or of any other law binding upon it.

§ 5763. The action specified in the last section shall be brought by the State. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits for thirty days after such submission to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action and on obtaining leave may maintain the same accordingly.

§ 5764. In an action brought as prescribed in this article, the court or judge thereof, may upon proof of the facts authorizing the action to be maintained grant an injunction, restraining the corporation and its trustees, directors, managers and other officers from collecting or receiving any debt or demand and from paying out or in any way transferring or delivering to any person any money, property or effects of the corporation during the pendency of the action, except by express permission of the court. When the action is brought to procure the dissolution of the corporation the injunction may also restrain the corporation and its trustees, di-

Actions against insolvent corporations — Code Civ. Pro., §§ 5765-5774.

rectors, managers and other officers from exercising any of its corporate rights, privileges or franchises during the pendency of the action, except by express permission of the court. The provisions of article 3 of chapter 9 of this Code, relating to granting, vacating and modifying an injunction apply to an injunction granted as prescribed in this section.

§ 5765. The court may in any stage of an action under the preceding provisions of this article appoint one or more receivers to take charge of the property and effects of such corporation and to collect, sue for and recover debts and demands that may be due and the property that may belong to such corporation, who shall in all respects possess the powers and authority conferred and be subject to all the obligations imposed upon receivers in other cases, and in all respects be subject to the control of the court.

§ 5766. Whenever an action shall have been brought against a corporation under the provisions of this article the court shall, if the proof is sufficient, proceed to final judgment in such case, dissolving such corporation and forfeiting its corporate rights, privileges and franchises, notwithstanding such creditor may settle with such corporation; and in all such cases any creditor or the attorney-general shall have the right to appear and prosecute such action. The original plaintiff shall not be liable for the costs of such further prosecution; but the creditor continuing the same, or the State, in case it is continued by the attorney-general shall be liable therefor.

§ 5767. In an action against a corporation upon a claim for which its stockholders, directors, trustees or other officers, or any of them, are liable by law in any event or contingency, one or more or all of the persons so liable may be made parties defendant by the original or by an amended or supplemental complaint; and their liability may be declared and enforced by the judgment in such action.

§ 5768. If any creditor of a corporation whose directors, trustees or other officers or stockholders are liable for the payment of his demand desires to make them, or one or more of them, parties to the action after a judgment therein against the corporation, he may do so by filing a supplemental complaint against them founded upon such judgment.

§ 5769. Whenever any creditor of a corporation shall seek to charge the directors, trustees or other officers or stockholders thereof on account of any liability created by law, he may commence and maintain an action for that purpose in the district court and may at his election join the corporation in such action.

§ 5770. The court shall proceed therein as in other cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation and appoint one or more receivers, who shall

possess all the powers conferred and be subject to all the obligations imposed on receivers by the provisions of section 5765; but if upon the filing of the answer or upon the taking of such account it shall appear that the corporation is insolvent and that it has not property or effects to satisfy such creditor, the court may without appointing any receiver, proceed to ascertain the respective liabilities of such directors, trustees or other officers and stockholders and enforce the same by its judgment as in other cases.

§ 5771. Upon a final judgment being rendered in any action under this article, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made in the order prescribed in section 5779.

§ 5772. In all cases in which the directors or other officers of a corporation, or the stockholders thereof shall have been made parties to an action in which judgment shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as may be necessary to satisfy the debts of the corporation. If the debts of the corporation, or any part thereof, shall still remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders and adjudge the amount payable by each and enforce the judgment as in other cases.

§ 5773. Whenever any action shall be commenced against any corporation, its directors, trustees or other officers, or its stockholders according to the provisions of this article the court may by injunction on the application of either party and at any stage of the proceedings restrain all proceedings by any other creditor against the defendants in such action; and whenever it shall appear necessary or proper order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action within a reasonable time not less than three months from the first publication of such notice and in default thereof such creditors shall be precluded from all benefit of the judgment which shall be made in such action and from any distribution which shall be made under such judgment.

§ 5774. In every such action the court may compel such corporation to discover any stock, property, things in action or effects alleged to belong to or to have belonged to it, the transfer and disposition thereof and the consideration and all the circumstances of such distribution. Every officer, employee, agent or stockholder of such corporation and every person to whom it shall be alleged that any transfer of property or effects of such corporation has been made, or in whose pos-

session or control the same is alleged to be, may be compelled in the discretion of the court to testify in relation thereto and to answer any questions touching the transfer or possession of such property or effects, although such answer may expose the corporation of which he is a member to a forfeiture of its corporate rights, or any of them, or may tend to criminate such witness or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the court on such examination; Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

ARTICLE IV. PROCEEDINGS TO ANNUL CORPORATIONS.

- Sec. 5775. By whom brought.
 5776. Same; causes for bringing.
 5777. Attorney-general to bring; who may, if he refuses.
 5778. When notice given to corporation.
 5779. Judgment; receiver; distribution of property.
 5780. Receiver, how and when appointed.
 5781. Application of preceding section.
 5782. Costs, how paid.
 5783. Judgment-roll, where filed.
 5784. Chapter does not extend to certain corporations.

§ 5775. An action may be brought by the State against a corporation created by or under the laws of this State for the purpose of vacating or annulling the existence of such corporation on the ground that its incorporation or the renewal thereof was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporating or by some of them, or with their knowledge and consent.

§ 5776. (As amended March 9, 1897; L. 1897, ch. 56.) An action may be brought by the State, or by any private person in the name of the State, on leave granted therefor by the district court, upon cause shown for the purpose of annulling the existence of any corporation created by, or under the laws of this State, except a municipal corporation, whenever any such corporation shall.

1. Offend against any of the provisions of any law by, or under which it shall have been created, altered or renewed; or,

2. Violate the provisions of any law by which such corporation shall have forfeited its corporate rights, privileges and franchises by abuse of its powers; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers and such default has not been repaired by actually commencing active operations; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges or franchises; or,

5. Whenever it shall exercise franchises or privileges not conferred upon it by law.

Corporate existence cannot be questioned collaterally. § 2852. See § 5346, Laws of South Dakota, note.

§ 5777. Whenever the attorney-general shall have reason to believe that any of the acts or omissions specified in the preceding section can be established by proof, he shall apply for leave and upon leave granted bring such action in every case of public interest and in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses which may be incurred therein. In case the attorney-general upon application shall refuse to bring such action leave to bring the same by a private person shall be granted only on notice to the attorney-general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the State to indemnify it and the defendant against all taxable costs therein.

§ 5778. Upon the application by the attorney-general to bring any such action the court may in its discretion direct notice of such application to be given to the corporation previous to the hearing and may hear the corporation in opposition thereto.

§ 5779. If in any such action it shall be adjudged that a corporation has forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be excluded from such corporate rights, privileges and franchises and be dissolved; and thereupon the affairs of said corporation shall be wound up by and under the direction of a receiver to be appointed by the court and its property sold and converted into money; and the proceeds after paying the costs and expenses shall be distributed in the order following:

1. For the payment of taxes and debts due the United States, the State of North Dakota and any county, town or village therein.

2. For the payment of the legal and equitable liens upon the property of such corporation in the order of their priority.

3. The wages of laborers and employes accruing within six months previous to the commencement of the action.

4. For the payment of the other just debts of the corporation.

5. The residue of such moneys, if any, shall be distributed among the stockholders thereof.

When any corporation shall be adjudged to have exercised a franchise or privilege not conferred on it by law, the court may in its discretion instead of rendering a judgment as above provided in this section render a judgment that such corporation be excluded from exercising such franchise or privilege and that the plaintiff recover costs and may also, in either case in his discretion, fine such corporation in a sum not ex-

Amendment — Code Civ. Pro., §§ 5780-5784; Pen. Code, §§ 6811, 7041, 7042, 7425.

ceeding two thousand dollars to be collected and paid into the State treasury.

§ 5780. If such an action is pending in the district court the receiver shall be appointed by the judgment of dissolution, or by a subsequent order founded thereon. If it shall be pending in the supreme court, then upon the entry of such judgment of dissolution the attorney-general shall forthwith commence an action in the proper district court for the appointment of such receiver and the winding up of the affairs of such corporation; and such corporation shall, notwithstanding such judgment of dissolution, be deemed to exist until a receiver shall be appointed, qualified and duly invested with the property of such corporation, but shall not be able to do any act or thing other than to make over and transfer its assets to such receiver.

§ 5781. The provisions of the two preceding sections so far as they relate to the distribution of the property of the corporation and actions to appoint receivers therefor shall apply to any corporation when the law under which it exists is repealed.

§ 5782. The necessary costs and disbursements, incurred in commencing and prosecuting such action by the attorney-general in the name of the State, shall, when certified to by him, be audited by the State auditor out of the State treasury. The receiver in such actions or the attorney-general in case such moneys be delivered to him by such receiver shall repay to the State treasurer any money advanced to the State on account of such costs and disbursements.

§ 5783. Upon the rendition of such judgment against a corporation, other than an insurance corporation, or for vacating or annulling letters patent, the attorney-general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State. If such judgment is against an insurance corporation, a copy of the judgment-roll shall be filed in the office of the commissioner of insurance.

§ 5784. The provisions of this chapter shall not extend to corporations organized under the laws of this State for educational, charitable, religious or cemetery purposes.

PENAL CODE.

CHAPTER I.

Preliminary Provisions.

Sec. 6811. Corporation convicted of felony; punishment.

§ 6811. * * * In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a felony, and there is no other punishment prescribed by law, such corporation is punishable by a fine of not less than five hundred and not exceeding five thousand dollars.

CHAPTER XV.

Conspiracy.

Sec. 7041. Hindering citizen to obtain employment.

7042. Black-lists prohibited; punishment.

§ 7041. Every person, corporation, or agent thereof, who maliciously interferes or hinders, in any way, any citizen of this State from obtaining employment or enjoying employment already obtained, from any other person or corporation, is guilty of a misdemeanor.

See Const., art. I, § 23.

§ 7042. Every corporation, officer, or employe thereof, and every person of every corporation on behalf of such corporation,

who exchanges with or furnishes or delivers to any other corporation or any officer, agent, employe or person, thereof, any "black-list," is guilty of a misdemeanor.

See Const., art. XVII, § 212.

CHAPTER XLVII.

Forgery.

Sec. 7425. Issuing false certificates of shares of stock.

7426. Reissuing canceled certificates.

7427. False evidence of debt signed by corporate officer.

7431. False entries in corporate books.

7435. False entries by corporate officers.

§ 7425. Every officer, and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this State, or of any other State, government or country, who, within this State, wilfully signs or procures to be signed, with intent to issue, sell, or pledge or to cause to be issued, sold or pledged, or who wilfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer

Frauds by officers, etc.—Pen. Code, §§ 7426, 7427, 7434, 7435, 7462, 7480, 7481.

or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, for signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

§ 7426. Every officer, and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this State, or of any other State, government or country, who, within this State, wilfully reissues, sells or pledges, or causes to be pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of any interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

§ 7427. Every officer and every agent of any corporation, municipal or otherwise, of any joint-stock association formed or existing under or by virtue of the laws of this State, or of any other State, government or country, who, within this State, wilfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who wilfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association, or any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

§ 7434. Every person who with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this State, or in any book of accounts kept by any such corporation or its officers, and delivered and intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is or purports to be discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the third degree.

§ 7435. Every person who, being a member or officer, or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association, or partnership or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement

of their money or property, or any defalcation or other misconduct committed by any person in the management of their business, is guilty of forgery in the fourth degree.

CHAPTER XLIX.

Embezzlement.

Sec. 7462. Fraudulent appropriation by officer of corporation.

§ 7462. If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use, or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

CHAPTER LI.

Trusts, Pools and Combinations Regarding Grain and Stock.

Sec. 7480. Combination among dealers in produce.

7481. Combinations to fix prices.

7482. Punishment.

7483. Violations by corporate officers.

7484. No person excused from testifying.

§ 7480. Every person who is a dealer in, or buyer of grain, hogs, cattle or stock of any kind and who enters into any contract, agreement, understanding or combination with any other person, not his partner, who is a like dealer or buyer, either:

1. For the pooling of the prices of grain, hogs, cattle, or stock, of any kind, between himself and such other person, or others; or,
2. For the division between them of the aggregate or net proceeds of the earnings or profits of such dealers or buyers or any portion thereof; or,
3. For fixing or establishing the price which such dealers or buyers shall pay or offer for grain, hogs, cattle or stock of any kind.

Is guilty of a misdemeanor.

See Const., art. VII, § 146. Trusts and combinations prohibited. Act of 1897, at p.

§ 7481. Every person who creates, enters into or becomes a member of or party to any pool, trust, combination or confederation, or makes or enters into any contract, agreement or understanding therefor, with another person, either:

1. To limit or fix the price of any commodity, article or merchandise; or,
2. To limit or fix the amount or quantity of any commodity, article or merchandise to be manufactured, mined, produced or sold in this State.

Is guilty of a misdemeanor.

See Const., art. VII, § 146.

Frauds in corporate management — Pen. Code, §§ 7482-7484, 7515-7517, 7525-7527.

§ 7482. Every corporation whether organized under the laws of this or any other State or country, and doing business in this State, and every partnership or association of individuals so doing business, which shall violate any of the provisions of the last two sections, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than one and not exceeding twenty per centum of the capital stock of such corporation or of the amount invested in such company, firm or association.

§ 7483. Every person, who, as president, manager, director, stockholder, receiver or agent, or other person of any corporation, on behalf of such corporation as is mentioned in the last section, or as a member of any partnership or association of any individuals, violates any of the provisions of this chapter, is guilty of a misdemeanor.

§ 7484. No person not a defendant on trial shall be excused or claim any immunity from testifying, or producing his records, contracts, books or papers, or the records, contracts, books or papers in his possession or under his control belonging to any other person, partnership, corporation or association, upon the trial of a prosecution for the violation of any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books, or papers, upon a prosecution for violating any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books, or papers upon a prosecution for violating any of the provisions of this chapter.

CHAPTER LVIII.

Fraudulent Insolvency by Corporations, and Other Frauds in Their Management.

Sec. 7515. Fictitious subscriptions for stock.

7516. Fraud in procuring organization.

7517. Unlawful use of names.

7525. Omitting to enter receipt of property.

7526. Fraudulent destruction of books.

7527. Publishing false reports.

7528. Refusing to permit inspection of books.

7529. Insolvencies deemed fraudulent.

7530. How fraudulent acts punishable.

7531. How a violation of duty punishable.

7532. When directors deemed to have knowledge.

7533. When director presumed to have assented.

7534. Same when director was absent from meeting.

7535. Foreign corporation, no defense.

7536. Director defined.

§ 7515. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; and every person who signs to any subscription or agreement, the name of any person, knowing that such

person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 7516. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 7517. Every person, who without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 7525. Every director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor.

§ 7526. Every director, officer or agent or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes or concurs in the making of any false entry, or omits or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in any county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment.

§ 7527. Every director, officer or agent of any joint-stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than are mentioned in sections 7516 and 7517, or who wilfully refuses or neglects to make or

deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

§ 7528. Every officer or agent of any corporation having or keeping an office within this State, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or to take a copy of the same or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 7529. Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 7530. In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this Code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

§ 7531. Every director of any moneyed corporation who wilfully does an act, as such director, which is expressly forbidden by law, or wilfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this Code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 7532. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter.

§ 7533. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the

time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 7534. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 7535. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another State, government or country, if it was one carrying on business or keeping an officer thereof within this State.

§ 7536. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law.

CHAPTER LXXIII.

General Provisions.

Sec. 7727. "Person" includes corporation.
7728. "Person" further defined.

§ 7727. The word "person" includes corporations as well as natural persons.

"Person" defined. § 5121. "Corporation" defined. § 2850.

§ 7728. When the term "person," is used in this Code to designate the party whose property may be the subject of any offense, it includes * * * all public and private corporations or joint associations, as well as individuals.

CODE OF CRIMINAL PROCEDURE.

CHAPTER XV.

Miscellaneous Provisions.

ARTICLE IV. CRIMINAL ACTIONS AGAINST CORPORATIONS.

Sec. 8413. Summons against corporation, requirements of.

8414. Form of summons.

8415. Manner of service.

8416. Charge investigated; manner of.

8417. Certificate of magistrate; procedure.

8418. Certificate of probable cause; procedure.

8419. Appearance of corporation; pleas.

8420. Information filed or indictment returned.

8421. Defendant's default; plea; fine collected.

§ 8413. Whenever a presentment by a grand jury or a complaint in writing is laid before a magistrate charging a corporation within his jurisdiction, of a public offense within its ability to commit, the magistrate must file the same and thereupon issue a summons signed by him, with his name of office, requiring such corporation to appear before him to answer the charge at a specified place and time, not less than ten days after the issuance of the summons.

§ 8414. The summons must be in substantially the following form:

County of } ss :
 State of North Dakota, }

In the name of the State of North Dakota.
 To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon complaint of A. B., or of the presentment of the grand jury of the county of for (designating the offense generally).

Dated at the city, (or town) of,
 the day of, 18..

.....
 Justice of the Peace,
 (or as the case may be).

§ 8415. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent.

§ 8416. At the time appointed in the summons, the magistrate must investigate the charge in the same manner as in the case

of a natural person brought before him, so far as those proceedings are applicable.

§ 8417. After hearing the proofs, the magistrate must certify upon the presentment or the complaint either that there is, or is not, sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate and the depositions of witnesses, if any have been taken, and exhibits together with a certified copy of the proceedings as they appear on his docket, and in the same manner as prescribed in section 7978.

§ 8418. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the State's attorney may, at the next term of the district court, file an information therefor, as in the case of a natural person held to answer. The State's attorney of the county may, by leave of the court, file an information against the corporation in like manner charging it with the commission of a public offense, or the grand jury may return an indictment therefor, without any previous action on the part of a magistrate.

§ 8419. If an information is filed or indictment returned, the corporation may appear by counsel to answer the same. If it does not thus appear a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 8420. When an information is filed, without a preliminary examination, or an indictment returned against a corporation, the clerk of the district court must answer the information or indictment, and such summons must be served in the manner provided for the service of a summons in the Code of Civil Procedure.

§ 8421. When the sheriff or other officer returns the summons with his certificate showing due service thereof, the corporation, on and after the day appointed in such summons for its appearance, must be considered in default, and the court must order the clerk to enter the plea of not guilty for said corporation in the minutes of the court, and all further proceedings shall be had in said action as if the corporation had appeared and pleaded not guilty to the information or indictment; and if upon the trial the corporation is found guilty, the court must impose a fine upon it as prescribed by law, and enter the judgment for the amount of such fine and the costs of said action, in the same manner as on a judgment in a civil action.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1895.

1. To regulate domestic corporations.
2. Revenue and taxation.
3. To prohibit pools, trusts and combinations.

Act 1.

AN ACT to regulate domestic corporations.

Be it enacted by the legislative assembly of the State of North Dakota:

Section 1. Whenever any corporation organized under the laws of the territory of Dakota or State of North Dakota shall fail or neglect for one year to transact its usual and corporate business within this State, or shall fail or neglect for one year to keep and maintain a public office at its principal place of business within this State for the transaction of its usual and regular business, and shall not within such year by a duly executed instrument filed in the office of the secretary of State constitute and appoint the secretary of State and his successors, its true and lawful agent and attorney, upon whom all process in any action or proceeding against it may be served, and agree therein that any process which may be served on its said agent and attorney shall be of the same force and validity as if served upon it personally within this State, and provide therein that such appointment shall continue in force irrevocable so long as any liability of the corporation remains outstanding in this State, such corporation shall be deemed to have abandoned and forfeited its franchise, and shall not thereafter commence or maintain any action in any of the courts of this State; Provided, That any such corporation may file such instrument within thirty days after this act shall take effect and be in force.

§ 2. Upon the filing of such instrument in the office of the secretary of State, service on such secretary as the agent and attorney of the corporation shall be deemed sufficient service on the corporation, and such secretary shall forthwith mail the process so served to some officer or director of the corporation if he shall know the post-office address of any such officer or director, or to such other person as may have been previously designated by the corporation, by written notice filed in the office of the secretary of State, and the secretary shall keep a record of all such process, which shall show the day and hour of such service. As a condition of valid service, the plaintiff shall pay to the secretary of State at the time of service the sum of two dollars,

which shall be taxed as costs and recovered by him if he prevail in the action.

§ 3. Whereas, an emergency exists in that there is no adequate law providing for the failure of domestic corporations to transact their usual business within this State, this act shall take effect and be in force from and after its passage and approval.

(Approved February 17, 1897.)

Act 2.

AN ACT prescribing the mode of making assessments of property, the equalization of and the levy and the collection of taxes and for all other purposes relative thereto, and the repealing of sections 1176 to 1198 inclusive, 1200 to 1229 inclusive, 1231, 1234, 1237 to 1240 inclusive, 1242 to 1247 inclusive, 1250 to 1253 inclusive, 1255 to 1290 inclusive, 1294, 1296, 1309, 1321, 1325 to 1330 inclusive, 1336 to 1339 inclusive, and 1346 of the Revised Codes of North Dakota of 1895, and all other sections and parts of sections of said Codes, and all acts and parts of acts inconsistent with the provisions of this act.

Be it enacted by the legislative assembly of the State of North Dakota:

Section 1. * * * The term "person" includes a firm, company or corporation.

§ 2. All real and personal property in this State and all personal property of persons or of corporations residing or doing business therein, and the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, except such as is hereinafter expressly excepted, is subject to taxation, and such property or the value thereof, shall be entered into the list of taxable property for that purpose, in the manner prescribed by this act.

§ 4. Personal property includes * * * all stock in turnpikes, railroads, canals and other corporations, except national banks out of the State, owned by the inhabitants of this State; all personal estate of moneyed corporations, whether the owner thereof resides in or out of the State, and the income of an annuity, unless the capital of such annuity be taxed within the State; all shares of stock in any bank organized, or that may be organized, under any law of the United States or of this State; and all improvements made by persons upon lands, held by them under the laws of the United States, and all such improvements upon land, the title to

Taxation: trusts and combines — Acts, March 8 and 9, 1897.

which is still vested in any railroad company, and which is not used exclusively for railroad purposes, and the improvements of any other corporation, whose property is not subject to the same mode and rule of taxation as other property.

§ 24. Every person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying or by the combination of different materials, with a view of making gain or profit by so doing, shall be held to be a manufacturer; and he shall, when required, make and deliver to the assessor a statement of the amount of his other personal property subject to taxation; also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list, as a part of his manufacturer's stock, the value of all his engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, including all tools and implements of every kind used or designed to be used for the aforesaid purpose.

§ 25. The president, secretary or principal accounting officer of any company or association, whether incorporated or unincorporated, except banking corporations whose taxation is especially provided for in this act, shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company and association.

2. The amount of capital stock authorized, and the number of shares into which said capital stock is divided.

3. The amount of capital stock paid up.

4. The market value, or if they have no market value, then the actual value of the shares of the stock.

5. The total amount of all indebtedness except the indebtedness of current expenses, excluding from such expenses the amount paid for purchase or improvement of property.

6. The value of all real property, if any.

7. The value of its personal property. The aggregate amount of the fifth, sixth and seventh items shall be deducted from the total amount of the fourth, and the remainder, if any, shall be listed as "bonds or stocks," under subdivision 23 of section 16 of this act, the real and personal property of each company or association shall be listed and assessed the same as other real and personal property; in all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to

make such return or statement from the best information he can obtain.

§ 111. Whereas an emergency exists in that many of the official duties prescribed in and by this act are to be performed prior to the first day of July, 1897, therefore an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

(Approved March 8, 1897.)

See Const., art. XI, §§ 176, 178, 179.

Act 3.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combination made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this act; to prohibit every foreign corporation violating any of the provisions of this act from doing business in this State; to require the attorney-general of this State to institute legal proceedings against any such corporations violating the provisions of this act; and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damage, and for other purposes.

Be it enacted by the legislative assembly of the State of North Dakota:

Section 1. That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or articles are hereby declared to be against public policy, unlawful and void.

Trusts and combines — Act, March 9, 1897.

§ 2. That any corporation, chartered under the law of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in the State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due processes of the law.

§ 3. That any violation of the provisions of this act shall be deemed and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars, or

more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or not more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. That any person or persons, or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction in this State, or any person, persons or corporations operating such trusts or combinations, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by any such combination or trust.

§ 5. That it shall be the duty of the judges of the district courts of this State specially to instruct the grand juries as to the provisions of this act.

(Approved March 9, 1897.)

Trusts and pools in grain, etc., prohibited.
Penal Code, §§ 7480 et seq.

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LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO THE REVISED STATUTES OF 1890.

OHIO.

CONSTITUTION OF OHIO—1851.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Bill of Rights.

Sec. 19. Private property not to be taken without just compensation.

ARTICLE II.

Legislative.

Sec. 28. Laws impairing the obligation of contracts prohibited.

ARTICLE VIII.

Public Debt and Public Work.

- Sec. 4. State credit not to be given or loaned; may not become stockholder in any company.
5. State not to assume debts of any corporation.
6. State not to authorize any municipality to become stockholder in, or loan credit to any corporation.

ARTICLE XII.

Finance and Taxation.

- Sec. 2. Taxation to be uniform; personal property includes what.
6. State not to contract debt for internal improvements.

ARTICLE XIII.

Corporations.

- Sec. 1. General assembly not to pass special acts conferring corporate powers.
2. Corporations may be formed under general laws, which may be altered or repealed.
3. Individual liability of stockholders.
4. Property of corporations liable to taxation.
5. Rights of way not to be appropriated without compensation.
7. Laws authorizing banking powers to be submitted to the people.

ARTICLE I.

Bill of Rights.

§ 19. Private property shall ever be held inviolate, but subservient to the public wel-

fare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Rights of way not to be appropriated without compensation. Art. XIII, § 5.

ARTICLE II.

Legislative.

§ 28. The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; * * *

See art. XIII, §§ 1-2.

ARTICLE VIII.

Public Debt and Public Works.

§ 4. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association in this State, or elsewhere, formed for any purpose whatever.

Municipality not to become stockholder in corporation. Art. VIII, § 6; see [§ 3245-2].

§ 5. The State shall never assume the debts of * * * any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the State in war.

See art. XII, § 6.

Taxation; corporations — Const., Art. viii. § 6; Art. xii. §§ 2, 6; Art. xiii. §§ 1-7.

§ 6. The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint-stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.

See art. VIII, § 4.

ARTICLE XII.

Finance and Taxation.

§ 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; * * * but, all such laws shall be subject to alteration or repeal; * * *

Laws impairing obligation of contracts prohibited. Art. II, § 28. Property of corporation subject to taxation. Art. XIII, § 4.

[Whether a company by accepting and acting on authority to increase its capital or accepting other amendment under the present Constitution thereby surrenders other franchises, as the right to be taxed by a special rate or mode, not decided. *Bridge Co. v. Mayor*, 31 Ohio St. 326.

The General Tax Law of 1852, applying in terms to existing corporations, authorized corporations with special charters to surrender any immunity from the taxing power of the State and submit thereto. It is an offer by the State. *Sebastian v. Bridge Co.*, 21 Ohio St. 451.

But the president of a corporation has no power to surrender its franchises by acceptance of the State's offer. *Id.*

Nor is payment of taxes, as of pieces of real estate left on the duplicate after their purchase, an acceptance of the offer. *Id.*]

§ 6. The State shall never contract any debt for purposes of internal improvement.

See art. VIII, § 5.

ARTICLE XIII.

Corporations.

Section 1. The general assembly shall pass no special act conferring corporate powers.

Laws impairing obligation of contracts prohibited. Art. II, § 28. Special acts of incorporation repealed, when. § 7884.

§ 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.

Special acts conferring corporate powers prohibited. Art. XIII, § 1. Banking laws to be submitted to the people. *Id.*, § 7.

§ 3. Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock.

Personal liability of stockholders. § 3258. Same, how enforced. § 3260.

[The word "dues" in above section includes a claim in tort for unliquidated damages. The section is remedial and to be literally construed. *Rider v. Fritchey*, 49 Ohio St. 285; s. c., 30 N. E. Rep. 632.]

§ 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

Taxation to be uniform. Art. XII, § 2. What property subject to taxation; listing property, etc. § 2731, and cross-references.

§ 5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

Property not to be taken without compensation. Art. I, § 19.

§ 7. No act of the general assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

See art. XIII, § 2.

REVISED STATUTES OF OHIO—1890.

Part First. Political.

TITLE I. PRELIMINARY.

CHAPTER I.

Definitions and General Provisions.

Sec. 4. Corporate seal; of what it may consist.

§ 4. Wherever * * * a corporate seal is required to be affixed to any instrument of writing, an impression of such seal upon either wax, wafer or other adhesive substance, or upon the paper or material on which such instrument is written, shall be alike valid and sufficient; * * *

Power to make and use a corporate seal. § 3239, subd. 4.

[See *Highway v. Pendleton*, 15 Ohio, 735; *Osborn v. Kistler*, 35 Ohio St. 393.]

TITLE II. LEGISLATIVE.

CHAPTER IV.

Printing and Distribution of Laws, Official Reports, Etc.

Sec. 61. Time when annual report of corporations to be made.

§ 61. * * * All corporations (except such as by their charters are required to make their reports at some other specified time) which are now required, or may hereafter be required by law to make annual reports for any purpose to any State officer or officers, shall make out the same on or before the fifth day of November of each year, and forthwith transmit them to the proper officer or officers; and for the purpose of making out all such reports as come within the provisions of this section, the year shall begin on the first day of November of each year, and end on the last day of October of each succeeding year; * * * the annual report of the commissioner of railroads and telegraphs may be made out and delivered at any time before the first day of January of each year.

Annual statement to be furnished stockholders. § 3268.

TITLE III. EXECUTIVE.

CHAPTER II.

Secretary of State.

Sec. 148a. Fees of secretary of State for official services.

148c. Foreign corporations to file statement with secretary of State.

148d. Foreign corporations to deposit securities.

§ 148a. The secretary of State shall hereafter charge and collect the following fees for official services:

1. For filing the articles of incorporation of any corporation whose capital stock is ten thousand dollars or under, ten dollars; of a corporation whose capital stock is over ten thousand dollars, one-tenth of one per cent. upon the authorized capital stock of such corporation.

2. For filing a certificate of increase of the capital stock of any corporation having a capital stock where the amount of the increase is ten thousand dollars or under, ten dollars; where the amount of increase is over ten thousand dollars, one-tenth of one per cent. upon the proposed amount of increased capital.

3. For filing articles of agreements of consolidation of corporations having a capital stock, the following fees shall be collected by the secretary of State: Said articles of agreements of consolidation shall be treated as the articles of incorporation of the new consolidated corporations created by such articles or agreements of consolidation, and the fees for filing such articles or agreements of consolidation, shall be the same in each case as is hereinbefore set forth for the filing of articles of incorporation of a corporation having the same amount of capital stock, as is provided for by the articles or agreements of consolidation for the new consolidated corporation, created by any such articles or agreement of consolidation; and in fixing the amount of such fees, no credit shall be allowed for fees previously paid by any of the constituent corporations, parties to such consolidation, but the same shall be determined solely by the amount of capital stock of the new corporation created by such articles or agreements of consolidation.

* * * * *

7. For filing a certificate of the reduction of the capital stock of any corporation, five dollars.

8. For filing a copy of the decree of court, changing the name of any corporation, five dollars.

9. For filing a certified copy of the acceptance by any corporation incorporated prior to the adoption of the present Constitution, of any of the provisions of the Revised Statutes, five dollars.

10. For filing an amendment to the articles of incorporation of any corporation, twenty cents a hundred words, to be in no case less than five dollars.

11. For filing for a railroad company a certificate of extension of line, a certificate of change of termini, a certificate of the adoption or change of location, a certificate of the intention of the corporation to construct a branch line, or a certificate of change of route, twenty cents a hundred words, to be in no case less than five dollars.

12. For filing a certificate of the extension of purpose, or change of domicile, of any corporation, five dollars.

13. For filing other certificates not herein enumerated, except certificates of election, for filing which no charge shall be made, twenty cents a hundred words, to be in no case less than five dollars.

15. For filing the certificate of subscription required to be filed by section 3244 of the Revised Statutes, two dollars.

17. For making every certificate under the great seal of the State, one dollar.

18. For recording miscellaneous records, papers, or other documents, required by law to be recorded in the office of the secretary of State, twenty cents a hundred words.

19. For making copies of articles of incorporation, and for making copies in other cases, the fees provided for in original section one hundred and forty-eight of the Revised Statutes shall be charged; and all fees herein established shall be paid into the State treasury as provided in said original section; and the secretary of State shall neither file nor record any of the articles of incorporation, certificates or other papers herein above referred to, unless the fees for filing same are first duly paid.

Articles of Incorporation to be filed. § 3238. Amendment of same to be filed. § 3238a. Certificates of increase and reduction of capital stock. §§ 3262, 3264. Copy of order for change of name to be filed. § 5856.

[The fee to be paid to secretary of State on filing articles of consolidation of corporations, some of which are foreign, is valid. The objections that it is not taxing property uniformly, that the object of the tax is not specified in the law, and that it is a regulation of commerce, are not sound. *Ashley v. Ryan*, 49 Ohio St. 504; s. c., 31 N. E. Rep. 721.]

§ 148c. (Enacted May 16, 1894, and amended April 23, 1898.) Every foreign corporation incorporated for purposes of profit, now or hereafter doing business in this State and owning or using a part or all of its capital

or plant in this State, shall, within thirty days after the passage of this act, or, in case of a company hereafter coming into this State, then before it proceeds to do any business in this State, under the oath of the president, secretary, treasurer, superintendent or managing agent in this State of such corporation, make and file with the secretary of State a statement, in such form as the secretary of State may prescribe, containing the following facts:

1. The number of shares of authorized capital stock of the company and the par value of each share.

2. The name and location of the office or offices of the company in Ohio, and the name and address of the officers or agents of the company in charge of its business in Ohio.

3. The value of the property owned and used by the company in Ohio, where situate, and the value of the property of the company owned and used outside of Ohio.

4. The proportion of the capital stock of the company which is represented by property owned and used and by business transacted in Ohio.

From the facts thus reported, and any other facts coming to his knowledge bearing upon the question, the secretary of State shall determine the proportion of the capital stock of the company represented by its property and business in Ohio, and shall charge and collect from the company, for the privilege of exercising its franchises in Ohio, one-tenth of one per cent. upon the proportion of the authorized capital stock of the corporation, represented by property owned and used and business transacted in Ohio, being the same fee required to be paid by corporations formed under the laws of Ohio. Upon the payment of the said amount, the secretary of State shall issue to the foreign corporation a certificate that such corporation has complied with the laws of Ohio and is authorized to do business therein, stating the amount of its entire capital and [of] the proportion of which is represented in Ohio. Provided, this section shall not apply to foreign insurance, banking, savings and loan, or building and loan companies, or to foreign co-operative or investment companies organized to sell certificates or debentures on the installment or partial-payment plan, or companies doing business on the service dividend plan, who have deposited with the treasurer of the State of Ohio securities satisfactory to him of the value of not less than twenty-five thousand dollars, and who shall annually thereafter deposit securities equal in value to ten per cent. of the gross receipts on the amount of business done in Ohio for the preceding year, until the whole amount so deposited has reached the sum of \$100,000 for the protection of the holders of such certificates or debentures, or to express, telegraph, telephone, railroad, sleeping car, transportation or other corpora-

tions engaged in Ohio in interstate commerce business; or to foreign corporations, entirely non-resident, soliciting business, or making sales, in this State by correspondence or by traveling salesmen. Any foreign corporation shall have the right, on application, to be heard by the secretary of State touching the matter of the determination of the proportion of its capital stock represented by property used and business done in Ohio. Any corporation aggrieved by the decision of the secretary of State, may, within ten days, appeal to the auditor of State, the treasurer of State and the attorney-general, whose decision in the matter shall be final. Every foreign corporation, subject to the provisions of this section, which shall neglect or fail to comply with its requirements, shall be subject to a penalty of one thousand dollars, and an additional penalty of one thousand dollars for every month that it continues to transact any business in Ohio, without complying with the requirements of this section, to be recovered by action in the name of the State, and on collection paid into the State treasury to the credit of the general revenue fund. The attorney-general, on the request of the secretary of State, shall institute such action in the court of common pleas of Franklin county, or of any county in which such corporation has an office or place of business, as he prefers. No foreign corporation subject to the provisions of this [section], shall maintain any action in this State upon any contract made by it in this State after the time fixed by this act for a compliance by such corporation with its requirements, until it shall have complied with the requirements of this act and procured the requisite certificate from the secretary of State. Every corporation which has filed its statement and paid the privilege tax under this section, and which thereafter shall increase the proportion of its capital stock represented by property used and business done in Ohio, shall, within thirty days after such increase, file an additional statement with the secretary of State, and pay a fee of one-tenth of one per cent. upon the amount of increase of its capital stock represented by property owned or business done in Ohio. All fees collected by the secretary of State under this section shall be paid by him into the State treasury to the credit of the general revenue fund. Every corporation subject to the provisions of this section, which complies with its requirements, shall not be subject to process of attachment under section 5521, Revised Statutes, or any law of Ohio, upon the ground that it is a foreign corporation or a non-resident of this State. If any person solicits, or transacts within this State, any business for any such foreign corporation, until it shall have complied with all the provisions of this section, he shall be deemed guilty of a misdemeanor, and on conviction, shall be

fined not less than ten dollars, nor more than five hundred dollars, or be imprisoned not less than ten days nor more than six months, or both. It shall be the duty of the prosecuting attorney, upon direction of the attorney-general, to prosecute any person charged with a violation of the provisions of this section.

Fee for filing statement. § 148a; see Act of 1893.

§ 148d. (Enacted April 25, 1893; am. May 19, 1894 and April 23, 1898.) That no foreign stock corporation, other than a banking or insurance corporation, or foreign building and loan associations, or foreign co-operative or investment companies, or foreign companies organized to sell certificates or debentures on the installment or partial payment plan, or foreign corporations doing business on the service dividend plan, who have deposited with treasurer of the State of Ohio securities satisfactory to him of the value of not less than twenty-five thousand dollars, and shall annually thereafter deposit securities to the satisfaction of said treasurer equal in value to ten per cent. of the gross receipts on the amount of business done in Ohio for the preceding year, until the whole amount so deposited has reached the sum of \$100,000, for the protection of the holders of such certificates or debentures, shall do business in this State without first having procured from the secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this State, and that the business of the corporation to be carried on in this State is such as can be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business or if more than one kind of business, by two or more corporations so incorporated for such kinds of business exclusively. The secretary of State shall deliver such certificate to every such corporation so complying with the requirements of the laws of this State. No such foreign stock corporations doing business in this State without such certificate, shall maintain any action in this State upon any contract made by it in this State until it shall have procured such certificate. Before granting such certificate, the secretary of State shall require every such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal particularly setting forth the amount of capital stock, the business or objects of the corporation which it is engaged in carrying on, or which it proposes to engage in or carry on within the State, and a place within this State which is to be its principal place of business, and designating in the manner prescribed in the Code of Civil Procedure in this State, a person upon whom process against such corporation may be

Fees paid by foreign corporation — R. S., § 148d.

served within this State. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within this State. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against such corporation may be served in this State. Any agent so designated by such foreign corporation may, in the name and on behalf of such corporation, bring or prosecute actions in any of the courts of this State in the same manner and with like effect as if done by an officer of such corporation. If the person so designated die or remove from the place where such corporation has its principal place of business within this State, and such corporation does not, within thirty days after such death or removal, designate in like manner another person upon whom process against it may be served within this State, the secretary of State shall revoke the authority of such corporation to do business within this State, and process against such corporation in actions upon any liability incurred within this State before such revocations, may after such death or removal, and before another designation is made, be served upon the secretary of State.) At the time of such service the plaintiff shall pay to the secretary of State two dollars, to be included in his taxable costs and disbursements, and the secretary of State shall forthwith mail a copy of such notice to such corporation, if its address or the address of any officer thereof is known to him. For each certificate thus issued by the secretary of State he shall be entitled to receive and shall be paid fees according to the amount of capital stock of each such corporation, as follows:

\$100,000 or less	\$15 00
More than \$100,000 and not exceeding \$300,000	20 00
More than \$300,000 and not exceeding \$500,000	25 00
More than \$500,000 and less than \$1,000,000	30 00
\$1,000,000 or more	50 00

Which fees and the several sums of two dollars above named are to be paid by him to treasurer of State to credit of general revenue fund. Provided that such foreign corporations as comply with the provisions of section 148c of the Revised Statutes, as amended May 16, 1894, shall not be subject to process of attachment under section 5521, Revised Statutes, or any law of Ohio, upon the ground, that it is a foreign corporation or non-resident of this State. If any person solicits, or transacts, within this State, any business for any such foreign corporation, until it shall have complied with all the provisions of this section, he shall be deemed guilty of a misdemeanor, and on conviction,

shall be fined not less than ten dollars nor more than five hundred dollars, or be imprisoned not less than ten days nor more than six months, or both. It shall be the duty of the prosecuting attorney, upon direction of the attorney-general, to prosecute any person charged with a violation of the provisions of this section.

Foreign corporation to file statement. § 148c. See § 3236.

[The United States constitutional guaranty to citizens of one State of all the privileges and immunities of citizens of the several States does not apply to corporations. A corporation of another State can only act here by statute or county, and conditions can be imposed by the legislature on such permission. *Tel. Co. v. Mayer*, 28 Ohio St. 521.

If a foreign charter is broad enough to enable the corporation to take real estate by devise, but does not expressly say so, a statute of the foreign State forbidding corporations to take by devise unless expressly empowered in the charter, operates only in its own State, and does not affect the power to take Ohio land. *Soc. v. Marshall*, 15 Ohio St. 537.

A foreign railway whose road is partly in Ohio is allowed by our law to own and operate it the same as domestic roads. *State v. Sherman*, 22 Ohio St. 411.

A corporation lawfully organized in another State, and authorized by it to transact business in this State may do business here and sue and be sued in our courts. *Newburg Co. v. Weare*, 27 Ohio St. 343.

A corporation created by one State is permitted by comity to make contracts in another. *Bank v. Jones*, 16 Ohio St. 167.

A deed by a domestic corporation, granting its franchise to be a corporation, under the act of 1864, to a foreign corporation which had bought its property, not mentioning the individual members thereof, nor requiring the taking of stock of a new organization, does not make the grantee an Ohio corporation nor properly secure the stockholders' double liability. *State v. Sherman*, 22 Ohio St. 411.

A foreign railway corporation, which leases and operates a railroad in this State under our laws becomes in effect a domestic corporation, liable to garnishee process, and the service thereof is the same as on domestic companies. *R. R. Co. v. Peoples*, 31 Ohio St. 537.

A foreign corporation authorized to do business in its own State and abroad is none the less a corporation because it does business here, and has done none in its own State; hence, it can be substituted for its agents as defendant in replevin. *Hanna v. International Co.*, 23 Ohio St. 622.

The fact that persons residing in another State, where stockholders have no individual liability, become incorporated there in order to do business in this State, is not necessarily a fraud upon our laws, nor a sufficient ground to exclude it from doing business here. *Bank v. Hall*, 35 Ohio St. 167.

If persons intending to do most, but not all, their business here, become incorporated in another State, not with intent to defraud the laws of this State, but because they were not all eligible to be directors by our laws, some of them being non-residents, they will not be treated as a mere partnership and personally liable for company debts. *Bank v. Lovell*, 2 Cin. Sup. Ct. R. 397.

Comity does not extend to enforcing here a New York statute forbidding corporations to assign for creditors. Such assignments are encouraged by our State, and no distinction will be made between foreign and domestic corporations. And such assignment by a New York corporation, whose plant and assets are here, will not be annulled here, but carried out. *Hall v. Iron Co.*, 24 Bull. 310. After the assignee for creditors of a foreign corporation has for a year and a half

administered extensive and responsible trusts in its property here, it is too late to attack his right to proceed on the ground that the foreign law forbade its corporations to assign for creditors. Moreover, such attack is collateral. *Id.*

Foreign corporations can sue in our State on principles of comity and adopt the same form of action that our statutes provide for banks. *Lewis v. Bank*, 12 Ohio, 132.

Where a foreign corporation, whose charter permits it to have an office and its books here, and gives stockholders the right to inspect the books, mandamus lies here to enforce such rights; so if such right is given by the foreign statute, for that is part of the charter. *State v. Farmer*, 7 Cir. Ct. 429.

The capacity to maintain the action need not be set out by a foreign corporation in its petition. *Smith v. Weed Co.*, 26 Ohio St. 562. But such capacity is put in issue by the general issue. *Lewis v. Bank*, 12 Ohio, 130.

To sue a foreign corporation located here upon charter duties or obligations, the charter or statute must be specially pleaded. *Devoss v. Gray*, 22 Ohio St. 150.

Above act does not apply to one whose business consists simply in selling through traveling agents and delivering goods manufactured outside the State. *Toledo Commercial Co. v. Glen Mfg. Co.*, 45 N. E. Rep. 197.]

TITLE VIII. COUNTY OFFICERS.

CHAPTER IV.

County Auditor.

Sec. 1034. Tax-list, how made out.

§ 1034. The auditor shall make out, in a book to be prepared for that purpose, in such manner as the State auditor prescribes, a complete list or schedule of all the taxable property in his county, and the value thereof as equalized, arranged in the form following:

* * * The value of personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of each person, company, or corporation, within each township, shall be set down in a column opposite the name of the owner, person, or corporation in whose name the same is listed: * * *

See § 2731, and cross-references.

TITLE XIII. TAXATION.

Ch. 1. Definitions, and property to be taxed.

2. Listing personal property.

CHAPTER I.

Definitions, and Property to be Taxed.

Sec. 2730. Definitions of terms.

2731. What property subject to taxation.

§ 2730. In this title * * * the terms "investment in bonds," shall be held to mean and include all moneys in bonds, or certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, * * * held by persons residing in this State, whether for themselves or others; the terms "invest-

ments in stocks," shall be held to mean and include all moneys invested in the capital or stock of any association, corporation, joint-stock company, or other company, the capital or stock of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by law, held by persons residing in this State, either for themselves or others; the terms "personal property," shall be held to mean and include, first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of any parcel of real property, as hereinbefore defined; second, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion, or interest in such stock, profits, or means, by whatsoever name the same may be designated, * * *

See § 2731, and cross-references.

[As to stock of foreign corporation to be listed by one outside the State, see *Lee v. Sturges*, 46 Ohio St. 153; s. c., 19 N. E. Rep. 560.]

§ 2731. All property whether real or personal in this State, and whether belonging to individuals or corporations; and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this State, shall be subject to taxation, except only such as may be expressly exempted therefrom; and such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title; * * *

Property of corporation to be taxed. Const., art. XIII, § 4. Tax-list, how made out. § 1034. Listing personal property. §§ 2734-2747. Shares of stock deemed personalty. § 3255. See § 3855.

[The situs for taxation of corporate stock is the domicile of the owner. *Bradley v. Bauder*, 36 Ohio St. 35.

The standard oil trust having been declared by our supreme court to be illegal, shares in it are void and not taxable. Whether the owner's equitable interest in the assets is taxable, not decided. *McDonald v. Haggerty*, 7 C. C. 508.

Stock pledged to secure loans, with power in the pledgee to transfer it to his own name, or sell, but which are in the pledgor's name on the corporation books, are taxable in his name. *Ratterman v. Ingalls*, 48 Ohio St. 468; s. c., 28 N. E. Rep. 168.]

CHAPTER II.

Listing Personal Property.

Sec. 2734. Personal property listed by whom.

2736. When to be listed.

2737. Statement to contain, what.

2739. Rules for valuation of personal property.

2742. Manufacturers must list all articles used in manufacturing, refining, etc.

Listing personal property — R. S., §§ 2734, 2736, 2737, 2742, 2743.

Sec. 2743. Manufacturers commencing business after day preceding second Monday in April.

2744. Returns by corporations generally.

2746. In whose name property to be listed; stock in companies which make return of capital need not be listed by stockholder.

2747. Lists to be made, when.

§ 2734. Every person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession, all moneys invested, loaned, or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation whatsoever, * * * the property * * * of corporations whose assets are in the hands of receivers, by such receivers; of every company, firm, or corporation, by the president or principal accounting officer, partner or agent thereof; and all surplus or undivided profits held by any society for savings or bank having no capital stock, by the president or principal accounting officer.

See § 2731, and cross-references.

[Principal office of corporation determines place of listing property. *Pelton v. Transportation Co.*, 37 Ohio St. 450.]

§ 2736. (As amended March 13, 1891.) Each person required to list property shall, annually, upon receiving a blank for that purpose from the assessor, or within five days thereafter, make out and deliver to the assessor a statement, verified by his oath, as required by law, of all the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, annuities, or otherwise, in his possession, or under his control, on the day preceding the second Monday of April of that year, which he is required by law to list for taxation, either as owner or holder thereof, or as parent, husband, guardian, trustee, executor, administrator, receiver, accounting officer, partner, agent, factor, or otherwise; and also of all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, held on said day by another, residing in or out of this State, for, and belonging to the person so listing, or any one residing in this State, for whom he is required by law to list, and not listed by such holder thereof, for taxation in this State.

See § 2731, and cross-references.

§ 2737. Such statement shall truly and distinctly set forth, * * * twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; * * * fifteenth, the amount of all moneys invested in bonds, stocks, joint-stock companies, annuities, or otherwise; * * *

§ 2739. * * * Investments in bonds,

stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof, in money; * * *

See § 2731, and cross-references.

§ 2742. (As amended April 23, 1891.) Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall, when he is required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the average value estimated, as provided herein, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining, and, also, of all articles which were at any time by him manufactured or changed in any way, either by combination or rectifying, or refining or adding thereto which, from time to time, he shall have on hand during the year next previous to the first day of April annually, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged. The said average value shall be ascertained by taking the value of all of said property subject to be listed on the average basis, owned by such manufacturers, on the last business day of each month the manufacturer was engaged in business during the year, adding such monthly values together and dividing the result by the number of months the manufacturer was engaged in such business during the year and the result shall be the average value to be listed. Every such manufacturer shall also list at their fair cash value, all engines and machinery of every description used, or designed to be used, in any process of refining or manufacturing (except such fixtures as shall have been considered a part of any parcel or parcels of real property), including all tools and implements of every kind used, or designed to be used, for the aforesaid purpose, owned or used by such manufacturer.

See § 2731, and cross-references. Stock deemed personalty. § 3255.

§ 2743. When any person shall commence business as a merchant or manufacturer in any county after the day preceding the second Monday of April in any year, the average value of whose personal property employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the auditor of the county

Listing personal property — R. S., §§ 2744, 2746, 2747.

the probable average value of the personal property by him intended to be employed in such business until the day preceding the second Monday of April thereafter.

See § 2731, and cross-references.

§ 2744. The president, secretary, and principal accounting officer of every canal or slack water navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company, or other joint-stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the State, at the actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages, or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, village, or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of State during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer, or agent, the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county auditor to furnish such blanks shall excuse any such president, secretary, principal accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is thereby required to proceed to have the same valued and as-

sessed: Provided, That nothing in this section shall be so construed as to tax any stock or interest in any joint-stock company held by the State.

See § 2731, and cross-references.

[Incorporated company owning property in an unincorporated company, which later is required to be listed by its officers, need not list such property. *Salt Co. v. Davis*, 21 Ohio St. 535.]

Listing by insurance company. *Ins. Co. v. La Rue*, 22 Ohio St. 639. Taxation of insurance companies; premiums. *Ins. Co. v. Cappelar*, 38 Ohio St. 560.

The owner of shares of stock of a domestic corporation required to list its property for taxation is not required to list his shares. *Jones v. Davis*, 35 Ohio St. 474.

But owner of stock in a foreign corporation is required to list the same for taxation, notwithstanding the capital stock of such corporation is taxed in a State where the corporation is located. *Bradley v. Bauder*, 36 Ohio St. 28.]

§ 2746. Personal property of every description, moneys and credits, investments in bonds, stocks, joint-stock companies, or otherwise, shall be listed in the name of the person who was the owner thereof on the day preceding the second Monday of April, in each year; but no person shall be required to list for taxation any share or shares of the capital stock of any company, the capital stock of which is taxed in the name of such company.

See § 2731, and cross-references. Shares of stock deemed personally. § 3255. See note to § 2744.

§ 2747. The listing of all personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, shall be made between the second Monday of April and the third Monday of May, annually; * * *

See § 2731, and cross-references.

Part Second. Civil.

TITLE II. CORPORATIONS.

- Ch. 1. Creation of corporations, and general provisions.
17. Powers of certain corporations.

CHAPTER I.

Creation of Corporations, and General Provisions.

- Sec. 3232. Laws by which corporations to be governed.
3233. Prior existing corporations may accept these provisions.
3234. Existing laws shall apply to such corporations.
3235. Purposes for which corporations may be created.
3236. Articles of incorporation; how executed; what to contain.
3237. Articles of certain corporations to set forth what.

Existing corporations: acceptance of act; purposes — R. S., §§ 3232-3235.

- Sec. 3238. Articles to be acknowledged, certified, and filed with secretary of State.
- 3238a. Amendment of articles.
3239. General powers.
3242. Books for subscription; notice of opening of; waiver of such notice.
3243. Subscriptions to stock, payable when.
3244. Election of directors; notice of.
3245. Directors, how chosen; method of voting.
- [3245-1.] Articles may limit voting power of stockholders.
- [3245-2.] Provisions attached to such limitation.
- [3245-3.] Application to court for appointment of inspectors of election.
- [3245-4.] Appointment of such inspectors.
- [3245-5.] List of stockholders to be furnished to inspectors.
- [3245-6.] Duty of inspectors; certificate of result of election.
- [3245-7.] Compensation of inspectors.
3246. Annual and other elections.
3247. Oath of directors; quorum; election of officers.
3248. Powers of directors.
3249. Code of regulations may be adopted.
3250. Directors may adopt by-laws.
3251. Stockholders may adopt or change regulations.
3252. Regulations may provide for what.
3253. Payment of stock subscriptions, how enforced.
3254. Stockholders entitled to certificates of stock; transfer-books to be kept; shall be open to inspection.
3255. Shares of stock are personalty and subject to execution.
3256. Corporations may borrow money.
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3258. Personal liability of stockholders.
3259. "Stockholder" defined.
3260. Personal liability, how enforced.
3262. Capital stock may be increased.
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3264. Capital stock may be reduced.
3265. Change of bonds authorized.
3266. Use of corporate stock or property limited to objects of creation.
3267. Number of directors, how changed.
3268. Annual statement to be furnished stockholders.
3269. Provisions of this chapter not to apply, when.
- [3269-1.] Dividends to be paid only from surplus profits.
- [3269-2.] Unpaid interest due corporation not included in profits.
- [3269-3.] Surplus profits; how determined.
- [3269-4.] Penalty for violation of preceding section.

§ 3232. Corporations created before the adoption of the present Constitution, and which have not, by election or some other act, come to be governed by laws since passed, shall be governed and controlled by the laws then in force, and the valid modifications thereof since or herein enacted; and other corporations, now existing or hereafter created, shall be governed and controlled by the provisions of this title.

Provisions of this chapter not to apply, when.
 § 3269. Laws to apply to existing corporations.
 § 3234.

[As to corporations formed previous to the revision of statutes, see *State v. Casey*, 38 Ohio St. 555.]

A general law, in terms applicable to all corporations, affects those created by special acts,

as to which there was a reserved power of amendment or repeal. *State v. G. L. & C. Co.*, 18 Ohio St. 262.

As to amendments to charters, acceptance thereof, etc., see *Owen v. Purdy*, 12 Ohio St. 73; *Goodin v. Evans*, 18 id. 150.]

§ 3233. A corporation created before the adoption of the present Constitution, and now actually doing business, may accept any of the provisions of this title, and when a certified copy of such acceptance is filed with the secretary of State, so much of its charter as is inconsistent with the provisions of this title is hereby repealed.

[A corporation formed under the old Constitution, and, therefore, independent of legislative control, to accept the provisions of a law authorizing such control, need not file an acceptance with secretary of State, though the law so provides, that being merely an evidence of the fact, and its omission will not avoid an actual acceptance. *R. R. Co. v. Cole*, 29 Ohio St. 126.]

A charter prior to the present Constitution having fixed the term of officers and time for election, the corporation by repeatedly altering the terms and time of elections after the present Constitution went into effect, must be deemed to be acting under it and under R. S., §§ 3234, 3246, and officers elected under the last change are legally elected, and cannot be excluded by the outgoing officers. *State v. Lakamp*, 4 C. C. 257.]

§ 3234. (As amended March 8, 1892.) Corporations created before the adoption of the present Constitution, which take any action under or in pursuance of this title, shall thereby and thereafter be deemed to have consented, and shall be held to be a corporation, and to have and exercise all and singular its franchises under the present Constitution and the laws passed in pursuance thereof, and not otherwise; Provided, That any fire insurance company so created, complying with the requirements of sections three thousand six hundred and fifty-four, and three thousand six hundred and fifty-five, or of any police regulation contained in chapter eleven of this title, or in chapter eight of title three, part first, shall not be deemed to have consented, and shall not be affected by the provisions of this section by reason of such compliance.

See § 3232.

§ 3235. (As amended April 6, 1894.) Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business; Provided, That the articles of incorporation formed for the purpose of buying and selling real estate shall expire by limitation in twenty-five years from the date of being issued by the secretary of State. In case any real estate owned by any such corporation is not sold or disposed of by any such corporation within twenty-four years from the date that their respective articles of incorporation are issued, it shall be forthwith the duty of the

Purposes; articles of incorporation — R. S., § 3236.

board of directors of such corporation to direct, by resolution, any officer of such corporation to institute action against such corporation and owners of liens upon or against such real estate proposed to be sold, by filing a petition in the court of common pleas in the county wherein such real estate is situated, praying for a sale of the real estate in the petition described; and should any such board of directors refuse to direct any officer to institute action as hereinbefore mentioned, and should such action be not instituted within sixty days after the expiration of the twenty-four years hereinbefore mentioned, it shall be the duty of the prosecuting attorney of the county wherein such real estate is situated, upon the expiration of said sixty days, to institute such action. Service of summons upon the defendants, appraisement and sale of such real estate and distribution of the proceeds of the sale shall be made as provided in actions of foreclosure of mortgages and marshalling of liens; Provided, however, The court may allow the plaintiff, in case he be the prosecuting attorney, a just and proper attorney fee, which shall be taxed with the costs of the action. And if the organization is for profit, it must have a capital stock. Such stock may consist of common and preferred, or of common only; and if of both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to dividends not exceeding six per centum per annum out of the surplus profits of the company for each year in preference to all other stockholders, and that they may convert such preferred stock into common stock of the company at their election.

See general powers of corporation. § 3239, notes and cross-references. Mining and manufacturing corporations. § 3862. Keeping bucket shops prohibited. § 10939-21.

[Public and private corporations distinguished. *Knapp v. Bank*, 1 Ohio St. 603; *Bank v. Bond*, id. 622.

The creation of a corporation is an exercise of sovereign legislative power which cannot be done beyond the territorial limits of the State exercising such power. *Myers v. Bank*, 20 Ohio, 283.

The doctrine that a corporation is an entity apart from its stockholders is a fiction, to be disregarded if used for a purpose outside of its reason. *State v. Standard Oil Co.*, 49 Ohio St. 137; s. c., 30 N. E. Rep. 279. They are not distinct beings. *Wise v. Miller*, 45 Ohio St. 388; s. c., 14 N. E. Rep. 218.

Organizing under a perpetual charter waives an agreement to obtain a charter for ten years only. *Cronin v. Potters, etc., Co.*, 29 Bull. 52.

Under a statute permitting corporations to be formed for building and repairing steamboats and other water craft, a corporation may be formed to build and repair wharf boats. *Gaff v. Fleisher*, 33 Ohio St. 453.

A corporation formed here, its certificate stating principal place of business to be here, and having its office here, is not made an illegal body by the fact of a secret intention to carry on its business wholly in another State and actually so

doing. Whether this would be sufficient ground for ouster on quo warranto, query. *State v. Taylor*, 25 Ohio St. 279.

Above section does not apply to corporations otherwise provided for, and does not, therefore, authorize organization of insurance companies. *State v. Stock Co.*, 28 Ohio St. 347.

A corporation is responsible for necessary debts, as attorney fees, contracted by promoter. *Bulldog Assn. v. Zahner*, 6 Bull. 389.

A corporation de facto may exist where corporation de jure is impossible. *Gaff v. Fleisher*, 33 Ohio St. 107.

A de facto corporation has capacity to acquire, hold, enjoy, encumber, and convey the legal title to real estate, and a judgment of ouster on account of defects in the original formation will not defeat prior rights and liabilities of it and of parties dealing with it in good faith. *Society v. Cleveland*, 43 Ohio St. 481; s. c., 3 N. E. Rep. 357.

Thus, where an attempt is made in good faith to organize a corporation by colorable proceedings approved by the attorney-general and secretary of State, who duly certifies to it for record, and there is uninterrupted user for two years, and rights have been acquired and disposed of by the body as a corporation, it is a corporation de facto, and its corporate capacity cannot be questioned in a private suit. Id.

A consolidation by the laws of different States of railroads in different States is not a domestic corporation. *Lee v. Sturges*, 46 Ohio St. 167; s. c., 19 N. E. Rep. 569.]

§ 3236. Any number of persons, not less than five, a majority of whom are citizens of this State, desiring to become incorporated, shall subscribe and acknowledge, before an officer authorized to take acknowledgments of deeds, articles of incorporation, the form of which shall be prescribed by the secretary of State, which must contain:

1. The name of the corporation, which shall begin with the word "The," and end with the word "Company," unless the organization is not for profit.

2. The place where it is to be located, or where its principal business is to be transacted.

3. The purpose for which it is formed.

4. The amount of its capital stock, if it is to have capital stock, and the number of shares into which the stock is divided.

5. Provided, Any association of five or more persons, who are residents of the State of Ohio, and who are associated, not for profit, and as the principal or ruling organization over subordinate organizations, associated, not for profit, and having a definite location or place of business in the State of Ohio, may be incorporated, having its location or principal place of business in the State of Ohio, and without naming, in its articles of incorporation, a permanent place where it is to be located, or where its principal business is to be transacted. But such association must name, in its articles of incorporation, the place where it is to be located, or where its principal business is to be transacted, at the time of its incorporation, with the name and place of residence of its then principal officers. And when such association changes its place where located, or the place where its principal

pal business is transacted, it shall be the duty of its principal officer, under its seal, if it has one, countersigned by the officer acting as secretary of such association, to certify to the secretary of State of Ohio, the place selected by such association, as its location, or where its principal business is to be transacted, with the names of its principal officers, and their places of residence, which certificate the secretary of State shall record, for public use in the records of his office.

Articles to set forth, what; amendment, etc. §§ 3237-3238a. Articles may limit voting power of stockholders. § [3245-1.] Manufacturing corporation to have a principal office. § 3855. Dissolution of corporation. §§ 5651 et seq. Quo warrant proceedings. §§ 6760-6793. Conditions under which foreign corporation may do business in State. Act No. 4, at p. 61. Special charters not accepted. § 7884.

[A seal omitted from the certificate of incorporation is a defect which the court can supply under section 5867. *Warner v. Callender*, 20 Ohio St. 190.

A charter provision that capital stock should be a certain sum to be subscribed and paid for, as by-laws should prescribe, does not make the subscription of the whole capital a condition precedent to the right to act as a corporation, or the right to borrow. *Bank v. Hall*, 35 Ohio St. 158.

A corporation created by concurrent legislation of two States, receiving the same charter in legal effect from each, has a legal domicile in each, and may hold meetings and transact business in either. *Bridge Co. v. Mayer*, 31 Ohio St. 317.

The borrower from a building association, when sued for a loan, is estopped to deny the validity of its incorporation as not acknowledged before the proper officer. *Lucas v. Assn.*, 22 Ohio St. 339.

An invalid corporation is not a partnership, nor are the members liable as partners. *Bank v. Hall*, 35 Ohio St. 158; *Rowland v. Furniture Co.*, 38 id. 269.

Irregularities in organizing will not deprive officers and members of the protection of the charter. But if organization is not substantially in accordance with the charter it will not protect. The corporation can only act by such agent as the charter allows. *Bartholomew v. Bentley*, 1 Ohio St. 37.

An acknowledgment of certificate before a notary instead of a justice, as required by law, is sufficient ground for ouster from corporate franchises. *State v. Lee*, 21 Ohio St. 662. But such mistake might be corrected by proper proceedings, and the effect of such correction would be to make the corporation *de jure* from its organization. *Spinning v. B. & S. Assn.*, 26 Ohio St. 483.

Defects in organization cannot be taken advantage of collaterally. *Callender v. R. R. Co.*, 11 Ohio St. 516; *Lucas v. B. & S. Assn.*, 22 id. 339.

As to effect when business is carried on exclusively outside of this State. *State v. Taylor*, 25 Ohio St. 279.

As to location of office. *Pelton v. Transp. Co.*, 37 Ohio St. 450; *State v. Life Assn.*, 38 id. 281.]

§ 3237. When the organization is for a purpose which includes the construction of an improvement which is not to be located at a single place, the articles of incorporation must also set forth—

1. The kind of improvement intended to be constructed.

2. The termini of the improvement, and the counties in or through which it or its branches shall pass.

See § 3236, and cross-references.

[See *Warner v. Callender*, 20 Ohio St. 190; *Callender v. R. R. Co.*, 11 id. 516; *R. R. Co. v. Sullivan*, 5 id. 276.]

§ 3238. (As amended April 27, 1896.) The official character of the officer before whom the acknowledgment of articles of incorporation is made shall be certified by the clerk of the court of common pleas of the county in which the acknowledgment is taken, and the articles shall be filed in the office of the secretary of State, who shall record the same, and a copy duly certified by him shall be prima facie evidence of the existence of such corporation, and all certificates thereafter filed in the office of the secretary of State, relating to the corporation shall be recorded; but the secretary of State shall not in any case file or record any articles of incorporation in which the name of the corporation is the same as one already adopted or appropriated by an existing corporation of this State or so similar to the name of such existing corporation as to be likely to mislead the public, unless the written consent of such prior existing corporation signed by its president and secretary, be at the same time filed with such articles of incorporation.

Fee for filing. § 148a. Articles, what to contain, etc. § 3236, and cross-references.

[If statute requires certificate to be acknowledged before a justice, acknowledgment before a notary is not good. *State v. Lee*, 21 Ohio St. 662.

Filing of certificate with secretary of State does not create a corporation, but is simply authority, and there is no corporation until the requisite stock has been paid in and directors chosen. *State v. Ins. Co.*, 49 Ohio St. 440; s. c., 31 N. E. Rep. 658.

The duty of the secretary of State, on presentation of articles of incorporation, to file such articles, is not discretionary. *State v. Taylor*, 44 N. E. Rep. 513.]

§ 3238a. Any corporation incorporated under the general corporation laws of the State, may, at any meeting of its members or stockholders, of which, and of the business to come before said meeting thirty days' notice has been given by a majority of the directors or trustees of said corporation in a newspaper published and of general circulation in the county where the principal place of business of said corporation is located, by a vote of the owners of at least three-fifths of its capital stock then subscribed, in the case of corporations having a capital stock, or by a vote of at least three-fifths of its members of corporations having no capital stock, amend its articles of incorporation so as to change its corporate name; or the place where it is to be located,

Amendment of articles; corporate powers — R. S., § 3239.

or where its principal business is to be transacted; or so as to modify, enlarge or diminish the objects or purposes for which it is formed; or so as to add thereto anything omitted from, or which might lawfully have been provided for in such articles originally; Provided, however, That nothing in this supplementary section contained shall authorize a corporation, by amendment, to increase or diminish the amount of its capital stock; nor shall any corporation, by amendment, change substantially the original purpose of its organization. When adopted, a copy of such amendment, with a certificate thereto affixed, signed by the president and secretary of the corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy is a true copy of the original, shall be recorded in the office of the secretary of State, who shall note on the margin of the record of the original articles of incorporation of said corporation, and on the margin of the index thereto, the volume and page where such amendment is recorded; and no such amendment shall take effect until filed for record with the secretary of State as herein provided, and until the secretary of the corporation shall have given notice, for three consecutive weeks, in some newspaper of general circulation in the county where the principal office of the corporation is situated, of such amendment; Provided, however, That any or all of the notices required by this section may be waived whenever the holders of all of the capital stock, of a corporation having a capital stock, or all the members of a corporation having no capital stock, consent thereto in writing. But no corporation shall change its name to one already appropriated, or to one likely to mislead the public; nor shall any corporation, by amendment, provide for a purpose which is unlawful. For recording such amendments and for furnishing a certified copy, the secretary of State shall receive a fee of twenty cents a hundred words, to be in no case less than five dollars.

See § 3236, and cross-references. Fee for filing, § 148a. Corporate name, how changed, §§ 5852-5857.

[An amendatory act pending a quo warranto proceeding against a corporation for usurpation will avail such corporation the same as others not so proceeded against. *State v. Protection Assn.*, 26 Ohio St. 19.

The power of the majority to accept an amendment of the charter to bind the minority is confined to changes reasonably within the original objects of the incorporation, and as regards the corporate property. *Ireland v. Palestine*, etc., 19 Ohio St. 369, 374.

A corporation has power to accept an amendment of its charter, and if not fundamental but auxiliary to its objects, the board of directors, as the governing body, is the proper authority to exercise the power. Consent of every stockholder is not necessary. Doubtful if there is any difference between auxiliary and fundamental al-

terations. The acceptance may be implied as exercising new powers or using the privileges conferred by a general law. *R. R. Co. v. Hatch*, 1 D. 84.

Acceptance of an amendment cannot be partial or conditional. If it is accepted, it is all, for all purposes. *Baldwin v. R. R. Co.*, 10 W. L. J. 237.

Reformation of the articles of incorporation so as to make them for ten years in pursuance of the original agreement is not in the power of a court, nor can specific performance of the agreement be had. *Cronin v. Potters Co.*, 29 Bull. 52, 54.

Articles incorporating an electric light company could not be so amended as to incorporate an electric street railway company as well. *State v. Taylor*, 44 N. E. Rep. 513.]

§ 3239. Upon such filing of the articles of incorporation, the persons who subscribed the same, their associates, successors, and assigns, by the name and style provided therein, shall thereafter be deemed a body corporate, with succession, and power

1. To sue and be sued.

Commencement of action and process. §§ 6477-6499. Service of summons, by publication, personal, out of the State, etc. §§ 5044-5052. Venue. §§ 5026-5033. Time of commencing actions. §§ 4988-4991. Pleadings. §§ 5102-5103. Summons and indictment against corporation. § 7231. Judgment and its enforcement. §§ 5340-5341. Attachment, execution thereof. §§ 5521-5534. Certain defects, how cured. §§ 5867-5871. Proceedings in quo warranto. §§ 6760 et seq. For voluntary dissolution. §§ 5651-5688. Evidence of corporate existence. § 3238.

[A corporation may be sued for libel. *Ins. Co. v. Ins. Co.*, 6 Rec. 382; 2 Bull. 269. And for false imprisonment. *Nichols v. Ry. Co.*, 1 Cleve. 268.

And for trespass in entering and destroying buildings. *Foot v. Cincinnati*, 9 Ohio, 31; *Ward v. R. R. Co.*, 10 W. L. J. 365. But not for assault and battery. *Orr v. Bank*, 1 Ohio, 36.

And for illegal and malicious acts. The injured person need not sue the agent, who did the acts, perhaps, in good faith. *Goodloe v. Cincinnati*, 4 Ohio, 509; *Smith v. Cincinnati*, Id. 514.

A corporation is not liable for the malice of its officer or agent where the act he is authorized to do does not involve the exercise of the qualities of head or heart, but is a mere physical act. But if the act involves the exercise of good faith, judgment or discretion, it is liable. *Blumenthal v. Cincinnati*, 7 Bull. 328.

Corporations are liable for the negligence of their agents and officers, the same as an individual. *R. R. Co. v. Keary*, 3 Ohio St. 201.

If one stockholder has bought up all the stock but that of one holder, and has converted the corporate property to his own use, such other stockholder may sue him for an accounting, and need not sue the corporation; and so, though plaintiff's stock has not been transferred to him, the fiction of the legal entity of the corporation will not be allowed to prevent the action. That there may be creditors will not be a defense. *Dye v. Hermes*, 32 Bull. 120.

A corporation suing need not aver that it is a body corporate. *Lewis v. Bank*, 12 Ohio, 146.

Nor need the capacity of a foreign corporation to maintain the action be set out in its petition. *Smith v. Weed Co.*, 26 Ohio St. 562.

To sue a foreign corporation located here upon charter duties or obligations, the charter or statute must be specially pleaded. *Devoss v. Gray*, 22 Ohio St. 159.

Plaintiff's description of itself in the caption as a corporation, but not in the body of the peti-

tion, is an allegation of corporate capacity good against demurrer. *Elektron Co. v. Jones*, 8 C. C. 311; *Gas Co. v. Dodds*, 29 Bull. 61; *Smith v. Weed Co.*, 26 Ohio St. 562.

A petition by a corporation failed to aver its corporate existence, but no objection is made until after judgment. Held, the defect is waived. *Spence v. Ins. Co.*, 40 Ohio St. 517; *Lewis v. Bank*, 12 Ohio, 148.

Where a petition averred a corporation, the due election of directors and their acts, it is to be presumed that the requisite amount of stock had been subscribed to authorize such election, and the acts of the directors. *R. R. Co. v. Smith*, 15 Ohio St. 328.

If a want of corporate capacity does not appear in the petition the defense must be made by answer or it is waived. *Smith v. Weed Co.*, 26 Ohio St. 562. Want of capacity, if not appearing in the petition, must be averred in the defense, or it is waived. *Id.*

The averment must be special. A general denial will not raise the question. *Elektron Co. v. Jones*, 8 C. C. 311; *Church v. Wood*, *Wright*, 12; 5 Ohio, 283.

But in case of foreign corporations the general issue puts their capacity in issue, and perhaps so of all corporations. *Lewis v. Bank*, 12 Ohio, 150.

An answer admitting the execution of the note sued on, which is payable to plaintiff, is a prima facie admission of corporate capacity. *Elektron Co. v. Jones*, 8 C. C. 311.

Pleading to the merits, as by general issue, waives misdescription of a corporation plaintiff, like misnomer of a natural plaintiff, but not its want of capacity to sue, or its non-existence. *Canal Fund v. Perry*, 5 Ohio, 61.

A debtor of a corporation cannot, when sued on his debt, question the legality of its organization on any grounds not constituting a condition precedent. *Receivers of Bank v. Renk*, 15 Ohio, 322.

One who, in consideration of being licensed by a corporation to fill up a watercourse, promises to reopen it on request, is estopped, when sued on his promise, to claim that the corporation's ownership and maintenance of it are ultra vires. *Hamilton, etc., Co. v. R. R. Co.*, 29 Ohio St. 341.

Members of a corporation, and those who have contracted with it are estopped in an action on the contract to deny the legality of the corporation, because of a defect in the certificate which had not been acknowledged before the proper officer. *Hagerman v. Bldg. & Sav. Assn.*, 25 Ohio St. 186.

A purchaser from a corporation is estopped to plead nul tiel corporation when sued by it in relation to the transaction. *Iron Co. v. Harper*, 41 Ohio St. 100, 106.

A creditor, after procuring the notes of two stockholders for his debt, agreeing that it should be created on their individual liability as stockholders, is estopped to claim that the corporation is not legal because formed to do business in another State not authorized by the statute, and that these were, therefore, the notes of two partners of the firm. *Beebe v. Thomas*, 2 Bull. 107.

The legal incorporation of a railway and consequent validity of its mortgage cannot be questioned by lienholders and general creditors in a suit to marshal liens and sell it (affirmed on this opinion without report, 23 Bull. 281). *Hatry v. Ry. Co.*, 1 C. C. 426.

A member of a corporation is estopped to deny its existence collaterally, though the corporation is not a party to the action, which is between members. *Benninger v. Gall*, 1 C. S. C. R. 331.

A subscription to the commissioners of the canal fund was sued on in the individual names of the commissioners. The plea was the general issue. Held, the plea did not admit their right to sue. *Id.*

A certificate of incorporation may be rejected as evidence where the issue is nul tiel corporation, unless the corporation shows fulfillment of conditions precedent required by the law under which it was formed. Hence, a corporation under a law "to improve any stream heretofore declared navigable," must show that the stream it

was formed to improve had been declared navigable and identify the stream. *Raccoon Co. v. Eagle*, 29 Ohio St. 238.

A statute reciting that a corporation has lost its rights and authorizing a purchase of its property, recognizes its preceding existence as a corporation capable of contracting. *McIntire v. Zanesville*, 9 Ohio, 203.

The attorney-general by proceeding in quo warranto against a corporation, thereby admits that it has been incorporated. *State v. Gas Light Co.*, 18 Ohio St. 284.

Proof that the opposite party is a corporation is not provable by the officer's verification to its pleading; this is not the best evidence. *Packet Co. v. Fogarty*, 9 C. C. 418.

A stockholder may obtain injunction against corporation allowing a holder of stock to vote illegally without making him a party, if a non-resident process against the corporation as trustee of all will give jurisdiction. *Allen v. Lagerberger*, 20 Bull. 368.

If the legislature cannot authorize a railroad to embark in new enterprises without the consent of all the stockholders, yet a stockholder cannot have injunction if, instead of being vigilant, he has waited until the mischief is done, and great public interests created. *Chapman v. R. R. Co.*, 6 Ohio St. 119.

A stockholder can compel directors and other stockholders who are misusing assets, depreciating the value of the stock and abusing their trust, to account and restore what has been wrongly withdrawn, and this without stopping the exercise of corporate functions. Equity has the same jurisdiction that it has of a bill by cestui que trust against trustee for the corporation, and directors are trustees for the stockholders. *Taylor v. Exporting Co.*, 5 Ohio, 162. In such suit the corporation and the misacting directors and stockholders are properly all made defendants. *Id.*

If directors have appropriated part of the assessed property and sold the rest to another corporation, in which they are interested, a stockholder can maintain suit to annul the transaction, and for an accounting against the two corporations and the directors. *Shaw v. Ohio Co.*, 19 Bull. 292.

A stockholder seeking to compel a trustee of the corporation, appointed by the directors, in order to settle up, to account for property unsettled, the corporation or its representatives, if defunct, are necessary parties. He must also state that the corporation, on request, refuses to prosecute the suit itself. *Reeder v. Wade*, 2 C. S. C. R. 19.

In suing a corporation for refusal to transfer stock, copies of the certificate should not be set out, and will not be set out on motion. *First National Bank v. Ry. Co.*, 16 Bull. 402.

A covenant in the agreement of consolidation of two railroads to complete and operate one of the routes, if creating a duty to all the stockholders, cannot be enforced by the action of one stockholder, and if owing to a class of stockholders, both classes must be made parties. *Port Clinton R. R. v. R. R. Co.*, 13 Ohio St. 544.

A stockholder may be compelled in equity to surrender a corporate bond held in trust for the corporation, which he claims in his own right. *Greenville Gas Co. v. Reis*, 44 N. E. Rep. 271.]

2. Contract and be contracted with.

See note to § 3266. Powers of corporation to be exercised by directors. § 3248. Certain contracts prohibited. § 6934.

[A corporation is responsible for necessary debts, as attorney fees, contracted by a promoter. *Bldg. Assn. v. Zahner*, 6 Bull. 389.

Persons contracting here with a foreign corporation concerning property, or rights in property, appropriate to its business in this State, and receiving the benefits thereof, will be estopped to deny the power of the corporation to contract here. *Petroleum Co. v. Weare*, 27 Ohio St. 343.

Corporate powers; subscriptions — R. S., § 3239, subds. 3-5, § 3242.

Stockholders' agreement to protect one of their number for indorsing paper of corporation, executed by all at the same time, and delivered to a third person for their use with the intention that it be acted on, is not a mere proposal of guaranty, but an absolute contract of indemnity. The delivery is equivalent to a delivery by each signer to the others, and no further acceptance or notice of an intention to act under it is necessary. *Wise v. Miller*, 45 Ohio St. 388; s. c., 14 N. E. Rep. 218.

The personal contracts of a firm may be assigned to a corporation into which the firm organizes itself. *Harper v. Dalzell Co.*, 27 Bull. 274.

A contract made with a company before it is incorporated is void for want of mutuality. *Turnpike Co. v. Coy*, 13 Ohio St. 84.

A contract by agent of a corporation, parts of which were authorized and parts were not, the corporation must either ratify or reject the entire contract. *Weeden v. R. R. Co.*, 14 Ohio, 564.]

3. Acquire and convey at pleasure all such real or personal estate as may be necessary and convenient to carry into effect the objects of the incorporation.

See note to § 3266; see § 3235. Mining and manufacturing corporation may hold real estate. § 3862. Conveyances void, when. § 5661. Title to corporate property to pass to trustees. § 5681. May mortgage property. § 3256.

[Though an indorsement of a note by the secretary of a corporation to its treasurer may not show title in the indorsee, without proof of authority, yet the defect is cured by other proofs of ownership. *Gould v. Ins. Co.*, 8 Bull. 281.

There is no general statute in Ohio describing how corporation deeds are to be executed. *Sheehan v. Davis*, 17 Ohio St. 580; *Norris v. Dains*, 52 id. 215; s. c., 39 N. E. Rep. 660.

A deed executed by president of a railway in due form under the corporate seal, and delivered, will be presumed authorized by directors, and failure of minutes to show such authority will not rebut the presumption. *R. R. Co. v. Harter*, 26 Ohio St. 426.

In absence of statute the deed of a banking corporation signed by the cashier in his own name, and acknowledged by him with the corporate seal affixed, is correctly executed. *Sheehan v. Davis*, 17 Ohio St. 571.

The deed of a corporation, signed by the president and sealed with his seal, is no conveyance, though the directors authorized him to convey, for it does not purport to be executed by the grantor. *Hatch v. Barr*, 1 Ohio, 390.

An assignment of a lease belonging to a corporation, reciting in the granting clause that it is made by B., its treasurer, and signed by B., treasurer, with the seal of the company, is not the act of the company and does not convey its title. *Norris v. Davis*, 52 Ohio St. 215; s. c., 39 N. E. Rep. 660. Above section does not apply, for the instrument was not by one acting under power of attorney. *Id.*

The signature of the president and the seal of the railroad to a corporate deed, executed according to above section, do not prove themselves, and the deed cannot be admitted against objection unless the execution is proved. *Walsh v. Barton*, 24 Ohio St. 28.

If a corporation's deed requires any acknowledgment, the officer executing it is the proper person to acknowledge it. *Sheehan v. Davis*, 17 Ohio St. 581.

Non-user or abandonment of corporate franchises without judicial forfeiture does not divest title to corporate property. *Webb v. Moler*, 8 Ohio, 548.

If a corporation authorized to acquire property under certain circumstances, purchases it in a mode or for a purpose not authorized, a stranger to the purchase, not injured by it, cannot object

to the title of the corporation. *Ehrman v. Ins. Co.*, 35 Ohio St. 324. So, also, where a note and mortgage were executed in payment of stock. *Ins. Co. v. Curtis*, 35 Ohio St. 343.]

4. To make and use a common seal, the same to alter at pleasure.

Corporate seal, of what to consist. § 4.

[The seal of a corporation affixed to a deed is prima facie evidence that it was affixed by rightful authority. *Sheehan v. Davis*, 17 Ohio St. 571; *Stetson v. Durrell*, 3 Gaz. 154.

If a corporation has not adopted any seal, and the directors authorized the president to execute arbitration bonds, a scroll seal affixed by him will be prima facie assumed as obligatory. *Seminary v. Blair*, 1 D. 370.]

5. And to do all needful acts to carry into effect the objects for which it was created.

See note to § 3266.

See § 3235. Powers of directors. § 3248.

§ 3242. (As amended April 6, 1891.) The persons named in the articles of incorporation of a corporation for profit, or a majority of them, shall order books to be opened for subscription to the capital stock of the corporation at such time or times and at such place or places as they may deem expedient, and of the time and place of opening which books at least thirty days' notice shall be given by publication in a newspaper published or generally circulated in the county or counties where books of subscription are to be opened; Provided, That such notice may be waived in writing by all the incorporators, and such waiver shall be entered or copied in the records of said corporation.

See §§ 3243, 3253, 3254.

[A verbal promise to take stock is void, and a note given to pay for such stock is void for want of mutuality and consideration, since company is not bound to issue stock. *Fanning v. Ins. Co.*, 37 Ohio St. 339.

"We agree to take \$1,000 in stock in the M. railroad if it comes near enough to the town of W. for convenience," though it expresses no consideration, nor a promise, nor any promise to issue the stock, is an acceptance by such railroad and location of the road binding on both parties, and not a mere voluntary statement of intention. Implied promises are raised on both sides. *R. R. Co. v. Brown*, 26 Ohio St. 223.

That the subscription was not made in a book opened for that purpose does not invalidate it. That is not the only way to dispose of stock. *R. R. Co. v. Smith*, 15 Ohio St. 328; *College v. Love*, 16 id. 27.

An offer to subscribe is irrevocable before its delivery and acceptance, and death of the subscriber before works such a revocation. *Wallace v. Townsend*, 43 Ohio St. 537; s. c., 3 N. E. Rep. 601.

An estoppel to deny being a stockholder cannot be shown by a proxy to vote, unless the subscriber's execution of the proxy is shown, and it is error to admit it. *Fanning v. Ins. Co.*, 37 Ohio St. 341.

A contract to take shares in a corporation not yet in existence is not enforceable for want of mutuality. *Dayton, etc., Co. v. Coy*, 13 Ohio St. 91.

Even if the charter did not take effect until the company is organized by an election of officers, yet prior subscriptions to stock are binding. The anticipated profits constitute the consideration. *Milford, etc., Co. v. Brush*, 10 Ohio, 111.

A conditional subscription made to a new corporation before directors are elected, if after election the condition is performed, takes effect from performance, and the first installment of five dollars is then payable. Notice of the acceptance of such subscription is not necessary. *R. R. Co. v. Smith*, 15 Ohio St. 328.

Fraud in procuring a subscription is no defense if the subscriber waits three years before repudiating. *Bank v. Varnish Co.*, 8 C. C. 563.

Where subscribers to corporate stock, who have not paid, pay money to the corporation to repair the capital, agreeing that as to stockholders this is a debt, but as to creditors a donation, but shall satisfy the individual liability pro tanto, such payment cannot be set off against liability on the subscription, the corporation being insolvent, for that is not the individual liability, and the payment is not a debt as to the corporation. *Ins. Co. v. Jones*, 35 Ohio St. 351.

Conditional subscriptions are valid. *R. R. Co. v. Smith*, 15 Ohio St. 328; *Armstrong v. Karshner*, 47 id. 276; s. c., 24 N. E. Rep. 897.

The subscriber may insert such conditions precedent as he chooses, and he is not a stockholder until they are performed. But conditions subsequent should perhaps be regarded as stipulations to be redressed by the ordinary remedies for breaches of contract. *Chamberlain v. R. R. Co.*, 15 Ohio St. 225.

A conditional subscription becomes absolute on the performance of the condition. Until then it is a standing proposition. *R. R. Co. v. Smith*, 15 Ohio St. 328; *Armstrong v. Karshner*, 47 id. 276; s. c., 24 N. E. Rep. 897.

The consideration of a conditional subscription is the performance of the conditions and the stock to which the subscriber would be entitled. *R. R. Co. v. Smith*, supra.

A charter for the construction of a first-class railroad does not require such quality of road as an implied condition to collecting subscriptions which contain no express stipulations to that effect. *Armstrong v. Karshner*, supra.

A subscription to stock in a railroad payable provided the road is "permanently located" on a given route, and that a freight house and a depot be built, is absolute when the road is permanently located and not on completion, and the provision as to the buildings, which would not be erected in advance of the road, is a mere stipulation and not a condition precedent. *Chamberlain v. R. R. Co.*, 15 Ohio St. 225.

A condition that a railroad shall "pass through" a place does not require the completion to make the subscriptions absolute. *R. R. Co. v. Smith*, supra; *R. R. Co. v. Stout*, 26 Ohio St. 241.

A subscription to stock, "provided the road is built," within a certain distance, is satisfied by the permanent location of the road, and the stockholder is then liable to calls, though the road is never completed. *Warner v. Callender*, 20 Ohio St. 190.

"When completed" in a subscription means when the road is in a condition for regular business. *R. R. Co. v. Hinsdale*, 45 Ohio St. 570; s. c., 15 N. E. Rep. 665.

If the subscriber gives a note for the balance of his subscription, taking a receipt, stipulating that when paid it shall be applied on his stock, he prima facie waives conditions precedent in the subscription. *Chamberlain v. R. R. Co.*, 15 Ohio St. 225.

Notes of subscribers, payable on completion of the road, when taken back and new notes payable absolutely in four years, given on the honest assurances of the officers that the road would be completed in that time, if they would do so. The road was abandoned. Held, the subscribers were liable on their new notes. Public policy and good faith to creditors and other subscribers require it. *R. R. Co. v. Bailey*, 18 Ohio St. 208.

Conditions precedent in a subscription are waived where the subscriber pays an installment,

votes on the stock and acts as president of the corporation, and such acts conclude him from denying that he was a stockholder. *R. R. Co. v. Hatch*, 1 D. 84.

A transfer of stock to a fictitious person is a nullity as a transfer, and is not to be treated as an abandonment, for a subscription is a contract and a party cannot release himself from a contract. *Turnpike Co. v. Ward*, 13 Ohio, 120.

On transfer of stock only partly paid for, the transferees assume all responsibilities. *Gilmore v. Bank*, 8 Ohio, 62, 71. Contra, if the seller represents it as being fully paid. *Gates v. Stone Co.*, 9 C. C. 99.

Subscribers to corporate stock cannot release themselves if their subscriptions are necessary to pay debts, as by transfer of their subscriptions before the stock is issued. *Gaff v. Fleisher*, 33 Ohio St. 107.

Query, whether a legislative change of route releases a subscription after a route was fixed. *Canal Co. v. Webb*, 9 Ohio, 136.

Immaterial changes in the route by an amendatory act will not release subscriptions to stock, and changes will not be presumed material in the absence of proof. *Turnpike Co. v. Brush*, 10 Ohio, 111.

A subscription to a railroad cannot be enforced after the charter of the road, or its successor, is changed as to one of the termini and a power given to buy steamboats for transportation to the river. *R. R. Co. v. Elliott*, 10 Ohio St. 57.

If at the time of a subscription to a railroad there is a statute authorizing an extension of the line, a subsequent exercise of this power will not affect the subscription. *Jewett v. Ry. Co.*, 34 Ohio St. 601. Authority to extend either terminus of a railroad into an adjoining county does not confine the new route to two counties and it may deviate so as to pass through a third county without releasing subscriptions. *Id.*

A statute requiring cancellation of the subscriptions of those who object to a change of the route in writing and demand it does not prevent a subscriber, who expressly stipulates against a change, from insisting on the condition. His failure to demand cancellation under the statute does not waive the condition. *Ry. Co. v. Fisher*, 39 Ohio St. 330.

A subscriber to stock is released by a change in the character of the stock substantially affecting its identity. *James v. R. R. Co.*, 2 Gaz. 49; 2 D. 261.

Alteration of the name of the corporation when formed from that proposed in the agreement to take stock does not release. *Royce v. Tyler*, 2 C. C. 175.

Where a person having a blank for taking subscriptions to stock puts down his own name in good faith for a certain number of shares, and thereby induces many others to subscribe, and afterward alters his subscription by reducing the number of shares, informing the secretary thereof, who does not object, such alteration is a nullity and no defense to the other subscribers. *Jewett v. Ry. Co.*, 34 Ohio St. 601.

Cancellation of subscriptions by certain stockholders, at a meeting to organize, by consent of a promoter in consequence of a misunderstanding of terms made with him, does not release them. He does not represent the others or the company, and cannot release; the contract was not with him. *Royce v. Tyler*, 2 C. C. 175.

A charter, which provides that if work is not begun within three years all rights shall cease, not being complied with, does not release subscriptions. This is merely ground of forfeiture of the charter, which the State may waive; and the State having extended the time, it is the same as if originally fixed at the lengthened period. *Turnpike Co. v. Brush*, 10 Ohio, 111.

Where company at once began its work, building a turnpike road, made a third of it in five years, then suspended work for four years, and then completed it in the next four years, this is not an abandonment, if the directors held regular meetings and progressed as fast as subscriptions obtained would admit, and the first subscriptions are not released on ground that the road was not built in a reasonable time. *Gibson v. Turnpike Co.*, 18 Ohio St. 396.

First installment; meeting of subscribers — R. S., §§ 3243, 3244.

Non-completion of the whole road, or abandonment of part, is no defense to a subscription containing no condition to that effect. *Armstrong v. Karshuer*, 47 Ohio St. 276; s. c., 24 N. E. Rep. 897.

Making some stock bear interest and some not is not in the power of a corporation without express grant. *R. R. Co. v. King*, 17 Ohio St. 542.

A note for stock subscribed, merely for the purpose of pretending to the public that the stock was not greater than it really was, or to prevent predominance of certain stockholders, is valid and will be enforced. *Bates v. Lewis*, 3 Ohio St. 459.

Stockholders who did not subscribe stock at a discount held not entitled to assert the invalidity of the issue of stock at a discount to other of the stockholders without consenting that the purchasers be placed in statu quo. *Peter v. Union Mfg. Co.*, 46 N. E. Rep. 894.]

§ 3243. An installment of ten per cent. on each share of stock shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments, and at such times and places, and to such persons, as may be required by the directors of the corporation.

Payment of stock subscription, how enforced. § 3253. Unpaid subscription to be collected on dissolution. § 5639.

[Paying a subscription by note and mortgage for the price satisfies the statutory requirement that the whole capital shall be paid in and invested in mortgages. It is equivalent to payment and a loan back again. *Ins. Co. v. Curtis*, 35 Ohio St. 343.]

Where a statute permitted any existing corporation to take subscription to stock in real estate which should accept the power thereby conferred, the acts of directors in receiving such subscriptions and selling the land to bona fide buyers with the subscribers' knowledge and without objection for many years until the stock has become worthless, is sufficient evidence of a parol acceptance of the act and the subscribers cannot now recover back the land — moreover they would be estopped to deny the power. *Goodin v. Evans*, 18 Ohio St. 150.

The omission of subscribers to pay the required installment down as required by statute does not release them from subscription. *Henry v. R. R. Co.*, 17 Ohio, 187; *Chamberlain v. R. R. Co.*, 15 Ohio St. 225; *R. R. Co. v. Smith*, id. 328.

When ten per cent. of the capital has been subscribed and the corporation organized, our statutes giving the directors power "to transact all business," authorizes assessments to be made, though the whole capital is not subscribed. *Jewett v. Ry. Co.*, 34 Ohio St. 601.

An assessment or call may be made on a subscriber before the entire amount of stock is taken, if such be the contract. Thus, a subscription not to be binding until \$800,000 in subscriptions be taken becomes liable to calls upon that sum being taken. This proviso does not convert it into a mere agreement to subscribe. *Emmitt v. R. R. Co.*, 31 Ohio St. 23.

If a subscription is conditioned that no calls shall be for more than ten per cent. nor oftener than every sixty days, a requisition for \$5 per share on subscribing and ten per cent. every month following, until paid in full, does not apply, even to require ten per cent. every alternate month. *R. R. Co. v. Pettis*, 26 Ohio St. 259.

A subscriber cannot be sued on his subscription by a judgment creditor of the corporation for calls made after he had sold and transferred his shares on the books, for he is not a debtor of the corporation. *Porter v. Laws*, 6 Rec. 756; 3 Bull. 384.

Notice to pay an installment to the corporation treasurer means at his office, and, hence, suffi-

ciently designates the place of payment. *Turnpike Co. v. Ward*, 13 Ohio, 129.

"Sixty days' notice" means a single notice sixty days beforehand, and not notice for sixty consecutive days. *Id.*; *Craig v. Fox*, 16 Ohio, 566.

If the directors resolve to allow interest on installments as paid to be paid in stock when the amount is sufficient, and actually pay interest to those subsequently paying installment on their stock subscriptions, those who had previously paid are entitled to interest also. The resolution is a binding obligation, the consideration for which is the injury to them by so using the funds. *City v. R. R. Co.*, 6 Ohio St. 489. If a stockholder assigns his stock after interest has accrued thereon under such resolution, he, and not the transferee of the stock, is entitled to it. *Id.*

An issue of treasury stock by the directors of a corporation to one of their number for the nominal consideration of one dollar is void. *Straman v. Water-Works Co.*, 8 C. C. 89.

A resolution giving subscribers to stock interest on the installments paid, if the company is earning nothing, is void as against creditors. *Wood v. Pearce*, 3 Gaz. 211; 2 D. 411.

In a sale of stock by the directors, a stipulation that the corporation, a railway, will pay interest on the stock until completion of the road, is void if the payment must be made out of the capital and there are debts. *R. R. Co. v. King*, 17 Ohio St. 534.

Giving a note instead of the cash payment required by law does not invalidate stock nor furnish ground to cancel the note. The subscriber is estopped and so would the company be. *Latham v. Ins. Co.*, 1 Bull. 127.]

§ 3244. (As amended May 18, 1894.) As soon as ten per cent. of the capital stock is subscribed, the subscribers of the articles of incorporation, or a majority of them, shall so certify, in writing, to the secretary of State, and thereupon shall give notice to the stockholders, as provided in section three thousand two hundred and forty-two, to meet at such time and place as they may designate, for the purpose of choosing not less than five nor more than fifteen directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified; Provided, That in case all subscribers are present in person, or by proxy, such notice may be waived in writing, and the incorporators of the company shall be liable to any person affected thereby, to the amount of any deficiency in the actual payment of said ten per cent., at the time of so certifying.

Directors, how chosen; appointment of inspectors; annual and other elections. §§ 3245-3247. Corporation may provide for election of directors. § 3252. Number of, how changed. § 3267. When director illegally elected. §§ 6775-6779.

[Fact that notice for first election of directors was not given by the incorporators does not invalidate it. Their acts cannot be thus collaterally questioned. The statute is directory. *Chamberlain v. R. R. Co.*, 15 Ohio St. 225.]

When a petition avers that directors have been duly elected by the stockholders, in pursuance of notice, presumption is that the requisite amount of stock had been subscribed to authorize such election, and also the making of assessments by the directors so elected. *R. R. Co. v. Smith*, 15 Ohio St. 328.]

Election of directors; stockholders; right to vote, etc.—R. S., §§ 3245, 3245-1, 3245-2.

§ 3245. (As amended April 23, 1898.) At the time and place appointed, directors shall be chosen, by ballot, by the stockholders who attend for that purpose, either in person or by lawful proxies; at such election and at all other elections of directors, every stockholder shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors shall not be elected in any other manner. A majority of the number of shares shall be necessary for a choice, but no person shall vote on any share on which any installment is due and unpaid. At such first election the subscribers of the articles of incorporation, or any of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and shall appoint the time and place for holding their first meeting.

See § 3244, and cross-references. "Stockholder" defined, § 3259.

[A subscription to stock and its acceptance by the corporation constitutes a person a stockholder and gives him the right to vote, although he has not paid up his stock. *State v. Hogan*, 1 Bull. 227.

A contract by a majority of stockholders to convey their right to vote to a person acting in the interest of another corporation in consideration of its guaranty of six per cent. dividends to them is illegal; first, as giving one corporation the rights of a stockholder in another; second, as ignoring the rights of the minority; third, a stockholder cannot part with the right to vote. Acquiescence by part of the minority is not an estoppel, nor admission that the contract is executed. Nor must pecuniary injury be shown in order to obtain injunction. That the beneficiary corporation was a party to the contract will not prevent its seeking injunction. *Hafer v. R. R. Co.*, 14 Bull. 68.

An agreement by the owners of the majority of stock in a railway to transfer it irrevocably to trustees so as to give the latter power to vote it, and thus prevent the control falling into speculative hands, the owners retaining all beneficial interest, except the voting power, is legal; but the clause making it irrevocable is void, and any subscriber may revoke it at any time. *Griffith v. Jewett*, 15 Bull. 419.

It is not illegal for stockholders to put their stock into the hands of a depository with direction to vote as directed by a committee appointed and controlled by them. *Ry. Co. v. State*, 49 Ohio St. 668; s. c., 32 N. E. Rep. 433.

An agreement of the owners of a majority of stock to elect a person secretary is not an illegal consideration for his father's note to the corporation, if it does not inure to part of the stockholders but to all. *Mullen v. Gaffy*, 8 Rec. 101.

Cumulative voting was not authorized by the above section. *State v. Stockley*, 45 Ohio St. 304; s. c., 13 N. E. Rep. 279; *State v. Holloway*, 1 C. C. 157; *State v. Fosdick*, id. 265.

The validity of the election of a director does not depend upon what he may contemplate doing if elected. *Ry. Co. v. State*, 49 Ohio St. 668; s. c., 32 N. E. Rep. 279.

Wrongful exclusion of votes at an election for directors cannot be justified by the fact that

the voter did not produce the bonds on which he voted, if such objection was not made at the time of voting, for, perhaps, he would have produced them. *State v. McDaniel*, 22 Ohio St. 366.

If owners of a majority of stock are wrongfully denied a right to vote, and some of their candidates are not eligible, and the minority ticket is declared elected, the court cannot induct those. Inasmuch as all the minority ticket received an equal vote, the court will not induct the eligible candidates on the majority ticket, but will set aside the election and order a new one. *State v. Hogan*, 1 Bull. 227.

A court of equity cannot adjudicate the validity of an election of officers, or their title or eligibility, and no injunction against them based on such ground can be granted further than to prevent injury to property rights without interfering with the possession of officers, for an ouster would leave the corporation without legal control. Even pending an action at law in quo warranto, the incumbent would not be enjoined from acting. *Messinger v. Church*, 6 Bull. 397.

Directors elected by stockholder who had not paid any part of their subscriptions, contrary to the above section, are officers de facto. A collateral attack on their election, as by denying the validity of bonds issued by them, will not be sustained. *Raymond v. Ry. Co.*, 21 Bull. 103.

The term of directors continues until their successors are duly elected and qualified, even though they may be interrupted by the usurpation of persons not legally elected. *State v. Bonnell*, 35 Ohio St. 174.

[§ 3245-1.] A corporation may provide in its articles of incorporation that each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote, and no more, at any election of directors or upon any subject submitted at a stockholders' meeting, and when such provision is made it shall be governed thereby.

See § 3236. Election of directors, § 3244. "Stockholder" defined, § 3259.

[Stock owned by corporation is not canceled, nor its voting power extinguished. The directors' inability to vote it is merely a way of distributing its voting power among all the stockholders. Hence, if the company pledges such stock to secure a loan, it may give the pledgee a right to vote it if there is no collusion. A known preference of the pledgee for the present board is not collusion, if he has not agreed to vote it. *Allen v. Lagerberger*, 20 Bull. 368.]

[§ 3245-2.] Every corporation where [whose] articles of incorporation contain the limitation mentioned in section [3245-1], shall be subjected to the following provisions:

1. No person shall hold or own stock in excess of one thousand dollars face value.

2. The directors shall annually, within thirty days after the thirty-first day of December, make and file with the recorder of the county in which the corporation is doing business, a statement of its financial condition upon the said thirty-first day of December, plainly setting forth its assets and liabilities in detail, the amount of its paid-up capital stock, the names of its stockholders, and the number of shares owned by each, and said statement shall be signed and sworn to by a majority of the directors, including the treasurer, before any officer au-

Election of directors; annual election — R. S., §§ [3245-3]-[3245-7], 3246.

thorized to administer oaths in this State. If the board of directors fail to make the annual statements required by this section, or if they make a false statement, they shall be personally liable for all claims and demands against such corporation.

3. By-laws for the government of the corporation, and for the distribution of its net earnings among its workmen, patrons and shareholders, not inconsistent with the Constitution and laws of the State, may be made by the stockholders.

State shall not become a stockholder. Const., art. VIII, § 4. Annual statement to be furnished stockholders. § 3268. Annual report to be made, when. § 61.

[§ 3245-3.] Within fifteen days next before any meeting held for the election of directors or trustees, or for the determination of any question, by the stockholders of any corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, any person or persons entitled to vote at said meeting and owning at least a one-tenth interest in its stock may apply to the court of common pleas of the county wherein said meeting is to be held, or, if the court be not in session, to a judge thereof, or, in case of the absence or disability of such judge, then to the probate court, for the appointment of inspectors for such meeting; but no such application shall be acted upon until notice thereof has been served upon the corporation at its general office; and the court or judge may require such additional notice by newspaper publication, or otherwise, as may be deemed proper.

See § 3244, and cross-references.

[§ 3245-4.] Upon the hearing of such application the court or judge shall appoint three competent disinterested persons inspectors for such meeting, if such appointment be considered proper and right, and for good cause may thereafter vacate such appointment as to one or more of said persons and appoint another or others instead. In case of the failure of any inspector to attend said meeting, or to act thereat, the stockholders may fill the vacancy so caused.

See § 3244, and cross-references.

[The stockholders have the right to choose the inspectors or judges of election at their meeting to elect directors, and the directors cannot against their will appoint such election officers. State v. Merchant, 37 Ohio St. 251.]

[§ 3245-5.] Before every such meeting, it shall be the duty of the officer or the agent of the corporation having charge of the transfer of its stock, to make out, under oath, a list of its stockholders, showing the

number and classes of share, held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings; and if no time be fixed therefor, then on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and shall be prima facie evidence of the ownership of its stock; but in case of its absence the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates or other satisfactory proof.

See § 3244, and cross-references. Books to be kept. § 3254.

[§ 3245-6.] The inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election, or for the decision of any question to be decided by vote, and determine the result, and their certificate of the result shall be prima facie evidence thereof.

See § 3244, and cross-references.

[§ 3245-7.] The court or judge making the appointment of inspectors may fix their compensation, and may require the applicants for their appointment to secure its payment; but the corporation shall be liable therefor if the meeting by vote so determine.

See § 3244, and cross-references.

§ 3246. Unless the regulations of the corporation otherwise provide, an annual election for trustees or directors shall be held on the first Monday in January of each year; if trustees or directors are, for any cause, not elected at the annual meeting, or other meeting called for that purpose, they may be chosen at a members' or stockholders' meeting, at which all the members or stockholders are present in person or by proxies, or at a meeting called by the trustees or directors, or any two members or stockholders, notice of which has been given, in writing, to each stockholder, or by publication in some newspaper printed in the county where the corporation is situate, or has its principal office, for ten days; and trustees and directors shall continue in office until their successors are elected and qualified.

See § 3244, and cross-references.

[When a meeting was stated and general, no notice of the time or place or of the business to be transacted is necessary. State v. Bonnell, 35 Ohio St. 15.]

Any lawful business may be transacted at the annual meeting without previous notice—even a resolution to sell and divide the property. *Wiswell v. Church*, 14 Ohio St. 31. Adjourned sessions of the annual meeting are but a prolongation of it, and no notice thereof is necessary. *Id.*

Where a stockholders' meeting for the election of directors was had at a certain hour pursuant

to notice, but the election was prevented by a restraining order, and several hours afterward a small number of stockholders met without the knowledge of the rest, who were in the vicinity, and held an election, this is not an adjourned meeting. The election is unfair and invalid, whether the injunction order bound the stockholders or not. *State v. Bonnell*, 35 Ohio St. 15.

When, at an annual meeting called for two o'clock, stockholders representing one party have reasonable ground to believe that the hostile party will postpone the election of directors for a train which will bring in more stockholders two hours later, and separate, and in the meantime the latter party hold an election and elect their own men, and the former party, as the train comes in, elect their men, neither set of directors will be upheld, but the old directors will be deemed in until a new election can be had. *State v. Smalley*, 7 C. C. 400.

Trustees elected on the prescribed day, without previous notice, this being the only election held that year, are de facto trustees for the year, and only those having a better right during the year can take advantage of the informality. *Presbyterian Soc. v. Soc.*, 25 Ohio St. 133.]

§ 3247. Each trustee and director shall, before entering upon his duties, take an oath faithfully to discharge the same; the trustees or directors chosen at any election shall, as soon thereafter as may be convenient, choose one of their number to be president, and, unless the regulations otherwise provide for the election of such officers, shall appoint a secretary and treasurer of the corporation; and a majority of the trustees or directors shall form a board.

See § 3244, and cross-references.

[No notice of meeting was given to two directors but a resolution by the other three was held valid in favor of third parties, whose rights were affected. *Bank v. Flour Co.*, 41 Ohio St. 559.

Approval of the minutes of the preceding meeting is only as to their correctness, and is not a ratification of an act by less than a quorum present, the rest assuming to vote by proxy. *Bank v. Walton Works*, 30 Bull. 382.

Removal without the State by trustee of a corporation is not a vacation or resignation, and an act of the legislature appointing a successor confers no rights. If the office was forfeited by neglect it must be so declared by adjudication after notice of trial before there is a vacancy. *State v. Bryce*, 7 Ohio (2d part), 82.

Notice and an opportunity to be heard are necessary to exercise a power of removal given in a statute. If for cause, merely declaring the office vacant is a nullity. *Hogan v. Carbery*, 7 Rec. 593; 4 Bull. 113.

A corporation payee of a note sold it to another corporation, the president indorsing it over. The maker cannot resist payment on ground that the president had ceased to be a stockholder, and therefore was not legally president, for he was a de facto officer. *Ehrman v. Ins. Co.*, 35 Ohio St. 339.

If a majority is by statute a quorum and no time or place of meeting is fixed, special meetings may be held at any time or place and without previous notice to all. *State v. Wilkesville*, 20 Ohio St. 288.]

§ 3248. The corporate powers, business and property of corporations formed under this title must be exercised, conducted, and controlled by the board of directors, or, where there is no capital stock, by the board of trustees; a majority of the directors must be citizens of the State; all directors, and

all executive officers, must be holders of stock in an amount to be fixed by the by-laws, and trustees of corporations must be members thereof; and whenever the office of director or trustee becomes vacant, the board of directors or trustees may fill the same for the unexpired term by appointment, unless the by-laws otherwise provide; and no person shall be appointed or act as a receiver of any railroad or other corporation within this State unless he is a resident citizen of this State.

See general powers of corporation. § 3239, notes and cross-references. Code of regulations and by-laws may be adopted. §§ 3249-3250. Number of directors, how changed. § 3267. Powers of, on dissolution. § 5675. May appoint trustees, when. § 5687. May be enjoined from borrowing money, when. § 6788. Power of directors of mining and manufacturing corporation. § 3863.

[If the negligence of directors in not supervising an officer's act is so long continued that his fraudulent acts become a course of business, their negligence becomes the proximate cause of losses by such fraud and would render the company liable unless the defrauded person were put on his guard by the nature of the transaction. *R. R. Co. v. Bank*, 24 Bull. 198.

A statute making directors personally liable if they incur certain debts gives an action for a penalty and not on the contract, if it makes them liable for the excess and not for the debts, nor on the contracts, and to any creditor and not merely to the holders of such contract. *Sturges v. Burton*, 8 Ohio St. 215.

A director need not be a stockholder unless the statute requires it. The right of stockholders to vote for whom they please is only limited by statute. *State v. McDaniel*, 22 Ohio St. 354.

As the statute says that a director shall cease to be such on ceasing to be a stockholder, it follows that he is not eligible to be elected a director if he is not a stockholder. *State v. Hogan*, 1 Bull. 227.

The directors must conduct the business and control the property. A court will not, on the application of a stockholder, interfere unless there is a breach of trust injurious to his interests. *Sims v. R. R. Co.*, 37 Ohio St. 536. Hence, a sale by the directors to one of their number of the unsold stock, not withheld from subscription, there being no fraud and the transaction being beneficial to the corporation, will not be set aside at the instance of a stockholder. 1d.

A corporation having gone to sleep for sixteen years, a charter provision that directors shall continue until their successors are qualified, and may fill vacancies, will not authorize the old directors to organize and fill up the board. A long abandonment is an implied resignation, and the new board is a fraud and will not be protected by the charter. *Bartholomew v. Bentley*, 1 Ohio St. 37.

An executive committee of directors, empowered to act between meetings of the board, and to incur debts only for current expenses, has no power to give a mortgage for such purpose. *Bank v. Walton*, 30 Bull. 382.

An officer of a corporation as a director must have knowledge while acting officially to affect the corporation with notice, unless he is acting under a special authority other than what he would possess as a director. *Ry. Co. v. McCoy*, 42 Ohio St. 251.

Notice to a director is not notice to the corporation unless he is then engaged in transacting its business. If the director of a bank is payee of a note and gets the bank to discount it, this is not notice to the bank of a counterclaim. *Campbell v. Bank*, 1 D. 285.

Knowledge of a director or a member of a board, which it is to his private interest to conceal

from the company, is not by implication notice to the company. *Antioch v. Carroll*, 25 Bull. 294.

Notice to the president of a bank is notice to the bank. *Burguyn v. Clarkson*, 2 W. L. J. 325.

Notice to a stockholder is not notice to the corporation. *Young v. Virginia*, 2 H. 137.

When ten per cent. of the stock is never paid in but directors are chosen and make a contract in the name of the corporation, they are personally liable, though they acted in good faith as persons acting as agents without being authorized. *Trust Co. v. Floyd*, 47 Ohio St. 529; s. c., 26 N. E. Rep. 110.

Transfer of stock belonging to corporation to persons not interested therein to qualify them as directors, and enable them to join in a fraudulent combination, is a fraud on the charter, and the charter will not protect them from personal liability. *Bartholomew v. Bentley*, 1 Ohio St. 37.

A pledgee of stock as collateral has no right of action against directors for mismanagement, rendering his pledge valueless. *Barnes v. Swift*, 26 Bull. 110.

A director held chargeable with the notice of the action of the board of directors, though he was not present at the meeting. *Greenville Gas Co. v. Reis*, 44 N. E. Rep. 271.

A corporate officer to whom a corporate bond was delivered by the directors in trust for sale cannot convert it to his own use in payment of a claim against the corporation. *Id.*

§ 3249. Every corporation may adopt a code of regulations for its government, not inconsistent with the Constitution and laws of the State.

By-laws may be adopted. § 3250. Same may be changed, and to provide for what. §§ 3251-3252.

[Invalid regulations. See *State v. Life Assn.*, 38 Ohio St. 281.]

§ 3250. The trustees or directors of a corporation may adopt a code of by-laws for their government, not inconsistent with the regulations of the corporation, or the Constitution and laws of the State, and may change the same at pleasure.

Powers of directors, etc. § 3248, and cross-references. See § 3249, and cross-references.

[Under this general power, a by-law withholding dividends until the stockholder's debt to the corporation is paid, is valid, and may be applied where his firm is the debtor. *Bank v. Higbee*, 4 C. C. 222.]

§ 3251. Regulations may be adopted or changed by the assent thereto, in writing, of two-thirds of the stockholders, or, if there is no capital stock, of the members, or by a majority of the stockholders or members, at a meeting held for that purpose, notice of which has been given by the acting president personally to each member or stockholder, or by publication in some newspaper of general circulation in the county in which the corporation is located, or in the counties through which its improvement does or will pass.

See § 3249, and cross-references.

[Amending the constitution and by-laws is a power incidental to all corporations, and not

affected by the members having signed the constitution. Section 3251 grants the power to amend, and though this may doubtless be limited in the constitution, its mere silence does not take away the power. *Wangerin v. Aspell*, 47 Ohio St. 250, 260; s. c., 24 N. E. Rep. 405.

An article forbidden by the constitution of a company to be changed cannot be amended except by unanimous concurrence. *McKeown v. Assn.*, 5 Bull. 32.

A by-law, unanimously agreed to, that the corporation shall be dissolved at the end of ten years, can be changed by the majority, and, hence, is a dead letter if the majority refuse to carry it out. *Crown v. Potters' Co.*, 29 Bull. 52.1

§ 3252. A corporation, by its regulations, when no other provision is specially made in this title, may provide for —

1. The time, place, and manner of calling and conducting its meetings.

2. The number of stockholders or members constituting a quorum.

3. The time of the annual election for trustees or directors, and the mode and manner of giving notice thereof.

4. The duties and compensation of officers.

5. The manner of election, or appointment, and the tenure of office, of all officers other than the trustees or directors.

6. The qualification of members, when the corporation is not for profit.

See § 3244, and cross-references. Regulations and by-laws may be adopted. § 3249, and cross-references.

§ 3253. If an installment of stock remain unpaid for sixty days, after the time it is required to be paid, whether such stock is held by an assignee, transferee, or the original subscriber, the same may be collected by action, or the directors may sell the stock so unpaid at public auction, for the installment then due thereon, first giving thirty days' public notice of the time and place of sale, in some newspaper in general circulation in the county where the delinquent stockholder resided at the time of making the subscription, or of becoming such assignee or transferee, or of his actual residence at the time of the sale; or, if such stockholder resides out of the State, such publication shall be made in the county where the principal office of the company is located; if any residue of money remain after paying the amount due on the stock, the same shall, on demand, be paid to the owner; and if the whole of the installment be not paid by the sale, the remainder shall be recoverable by an action against the subscriber, assignee, or transferee.

See § 3243. Unpaid subscriptions to be collected on dissolution. § 5659.

[A subscriber sued by the corporation on his subscription to stock is not estopped to deny the legal existence of the corporation. *Nav. Co. v. Eagle*, 29 Ohio St. 238.

Representations as to the future intention, purpose or expectations of a company, whereby subscriptions are obtained, will not defeat recovery thereon if not shown to be fraudulent for the purpose of deceiving, though those as to past or present status, or as to material matters, may have that effect. *Armstrong v. Karshner*, 47 Ohio St. 276; s. c., 24 N. E. Rep. 897.

A subscription to stock was made and paid for on the inducement of an agreement to sell certain lands of the company at a certain price. The officer taking the subscription had no right to contract to sell the land, and the company refused to make the conveyance. Held, the contract was entire. The company cannot hold on to part and repudiate the rest. The officer and subscriber having acted on a mutual mistake as to his powers, there is an implied promise to pay. The company is also bound to repay the money and interest, on the ground of failure of consideration, if it refuses to convey. *Weeden v. R. R. Co.*, 14 Ohio, 563.

In an action on a subscription payable by statute in installments, as required, it is necessary to aver a call by the directors and notice thereof. A mere averment of notice is not sufficient. *Canal Co. v. Webb*, 9 Ohio, 136.

A call or resolution of the board of directors, requiring installments on subscriptions to be paid, was necessary under the act of 1852; hence is a material averment, in a petition to collect, and a denial thereof states a good defense. *R. R. Co. v. Hall*, 26 Ohio St. 310.

A petition on a subscription in installments, conditioned on expending it on a certain line of railway to be located, is demurrable if it fail to aver a road constructed on the line designated, or an offer or readiness to expend the money according to the condition. *Trott v. Sarchett*, 10 Ohio St. 241.

A judgment for the full amount of a subscription having been rendered in favor of the receiver of an insolvent corporation under Revised Statutes (§ 5659), the court appointing him has power to restrict its collection to such part of the judgment as will be the debtor's fair proportion of what is necessary. *Clarke v. Thomas*, 34 Ohio St. 46.

On a subscription payable in land the recovery is not the nominal value of the stock, but is the land and damages for the delay, and if that cannot be got at, its value. *R. R. Co. v. Hatch*, 1 D. 84.

A forfeiture of stock by order of the directors for non-payment of subscriptions, although doubtless binding on the company and a release of such stockholder, yet in case of insolvency it may be fraudulent as to creditors and enjoined. *Upson v. Quarry Co.*, 2 Clev. 355.]

§ 3254. Stockholders shall be entitled to receive [certificates] of their paid-up stock in the company; and the president and secretary of the company shall, on demand, execute and deliver to a stockholder a certificate showing the true amount of the stock held by him in the company. And it shall be the duty of the directors of such corporation, when organized, to keep a record of all stock subscribed and transferred, and of the secretary or recording officer of such corporation to register therein all subscriptions and transfers of stock. For that purpose a book shall be kept, and whenever any certificate or certificates of stock are assigned and delivered by a stockholder, the assignee thereof shall be entitled on demand to have the same duly transferred upon said book by such secretary or recording officer, whose duty it shall be at the same time to enroll therein also the name of said assignee

as a stockholder, and the books and records of such corporation shall at all reasonable times be open to the inspection of every stockholder.

Stockholder defined. § 3259. Reissue of lost or destroyed certificates provided for. Act No. 2, at p. 60.

[Assignment of the legal title, until transferred on the books of corporation as required by the certificates of stock transferred by indorsement, is in the original stockholders. *Norton v. Norton*, 43 Ohio St. 522; s. c., 3 N. E. Rep. 348.

A purchaser of stock in open market, without knowledge of fraud, is entitled to have it transferred to him on the company's books. *Cincinnati, etc., R. R. Co. v. Citizens' Nat. Bank*, 56 Ohio St. 251; s. c., 47 N. E. Rep. 249.

Where the State is a stockholder, and by a statute changes its right to vote for all the directors into a power to appoint three directors, this does not limit its right to sell its stock, nor apply after sale. Hence, the transferees of the State's stock are not to appoint three directors, but resume the ordinary power of stockholders to vote for all directors, and the State's power to appoint three is divested. *Harper v. Amst.*, 32 Ohio St. 291. Conditions imposed on transferees of stock under one act do not attach to sale made under any other act. *Id.*

A stock certificate, though under seal, may be assigned by a power of attorney given in blank to transfer it. *Lee v. Bank*, 1 Rec. 385; 2 C. S. C. R. 298. A levy on and sale of the mere paper certificate of stock is a nullity and passes no title unless the owner assent thereto. *Id.*

Where a stock certificate has been stolen undorsed, the owner is entitled, on proof thereof and offer of indemnity, to a new one, and may enforce this by mandamus. *Hof v. Bank*, 6 Bull. 697. But see *Freon v. Carriage Co.*, 42 Ohio St. 30.

V. sold his stock to F., and delivered the certificate. F. lost the certificate before transfer, and did not find it until seventeen years afterward. The company was not notified of the sale, and ten years later, on V.'s representation that he had lost his certificate, issued a new certificate to B., to whom V. had assumed to sell. Held, the reissue was a breach of the duty owed by the company to F., and does not abridge his right to have the stock or its value from the company, but the company is not liable for dividends paid before notice of the first sale. The Statute of Limitations does not run against F. until refusal to transfer. *R. R. Co. v. Robbins*, 35 Ohio St. 482.

Stock certificates transferred in blank are not subject to doctrine of *lis pendens*, hence, if the owner so pledges them, a purchaser from the pledgee is not charged with notice by a creditor's bill against the pledgor and the corporation. *Krebs v. Forbriger*, 21 Bull. 313.

Sales of stock owned by the corporation or held in trust for it will not be enjoined because of the admitted intention of the directors to sell to those who will vote to sustain them, if the sales are to be at public auction to the highest bidder. *Louis v. Dexter*, 20 Bull. 5.

A certificate of stock is not a negotiable instrument, and an assignee of it only gets the assignor's title, and if the stock is an overissue and the assignor is the secretary of the company and issued the stock to himself, the assignee's duty is to make inquiries as to equities. The assumption that inquiries would have received a false answer from the secretary does not prevent the omission being contributory negligence. *Ry. Co. v. Bank*, 1 C. C. 199; *Same v. Bank*, 22 Bull. 248.

A secretary in issuing stock to himself is not acting as agent of the corporation, and his assignee's loss on such overissue is not the proximate result of the directors' negligence in not examining the books, but the secretary's crime is the proximate cause. *Ry. Co. v. Bank*, 1 C. C. 199.

Certificates of stock — R. S., § 3254.

On an overissue of stock by the secretary filling up blank certificates over the genuine signatures of the officers, held, the corporation owes a care over its agents and is responsible for neglecting it. The care is owing not only to stockholders but to all purchasers of stock. That the certificates were in favor of one of the signing officers does not alone put lenders of money on such certificates on notice. The company could have required a different form of signatures to the certificate in such case. *Bank v. Ry. Co.*, 29 Bull. 15.

A corporation sued for refusal to transfer stock to plaintiff, claiming the certificate he presented to be an overissue, may put its books in evidence to show that the certificate cannot be accounted for among the genuine stock. *Ry. Co. v. Rawson*, 16 Bull. 423.

Certificate of stock with genuine signatures and the corporate seal are presumed to be genuine, but this is rebuttable, and the burden is on the corporation to prove them to be an overissue. *Ry. Co. v. Rawson*, 16 Bull. 423; *Perin v. Ry. Co.*, 18 Id. 382.

This presumption of genuineness is overcome by proof that the certificate could not have been issued as an original one, or in lieu of a genuine surrendered one. The strength of the presumption must vary with the number of invalid certificates issued. Proof that an invalid certificate is made valid by a subsequent surrender of a valid one for the purpose must come from the party asserting it. *Id.*

If the secretary who had issued the disputed certificate was then owner of more than such number of genuine shares it will be deemed, until disproved, that he surrendered a valid certificate for the disputed one, and that the latter represented the genuine shares. *Ry. Co. v. Rawson*, *supra*.

To show that a certificate is valid because issued in lieu of surrendered certificates some act of surrender beyond a mental operation is necessary. The secretary's possession of the genuine is not a surrender, if he did not deface, or deliver, or make an entry, but kept individual control and sold it to another. But putting it in the usual place of surrendered certificates is sufficient without entry on the books or a cancellation. *Perin v. Ry. Co.*, 17 Bull. 261.

A corporation whose secretary had issued a large amount of genuine and spurious stock, the various holders of which have begun or threatened suits to determine its validity, and the company is thereby in danger of paying double, may unite all such holders in one suit to ascertain which shares are valid and quiet the title therein and cancel the invalid shares and prevent a multiplicity of suits. *Ry. Co. v. Bank*, 22 Bull. 248.

If the president of the company, for its benefit, becomes administrator of the estate of the officer who was guilty of overissuing the stock his acts in inducing holders of spurious stock to change their position to their prejudice binds the company. But inducing a seller of stock to repurchase it from his vendee is not a change of position to his prejudice by reason of his implied warranty of its genuineness. *Ry. Co. v. Bank*, 24 Bull. 198.

Under an act forbidding a stockholder to transfer his shares while indebted to the company, the company has a lien on them for its debt, and a transferee of them without the bank's consent holds subject thereto, and the consent of a majority of the directors authorizes the transfer. *Conant v. Bank*, 1 Ohio St. 298.

An act authorizing assignments of stock on the books of the company, if the stockholder is not indebted to the company, does not prevent conveyance of an equitable title therein in other ways, and debts incurred to the company after it has received notice of a transfer are not liens on the stock, and notice to the cashier of a bank is notice to the bank. An equitable transfer carries subsequent dividends. *Id.*

A bank whose by-laws forbade transfer of stock holder shall transfer his stock until he has paid any debt due and payable gives the bank a lien on stock for a discount not yet mature, and it

may refuse transfer until secured or paid. "Due and payable" will be construed to include immature paper. *Bowmer v. Bank*, Wright, 477.

A bank whose by-laws forbade transfer of stock as long as the stockholder owed the bank anything failed to print this on the certificates of stock. Held, a bona fide buyer or pledgee of the stock from such stockholder has an equity superior to that of the bank. A by-law that the stock is only transferable on the books of the bank on surrender of the certificate does not prevent a transfer of the equity by indorsement of the certificate, but it does render the attempted assignment to the bank by the stockholder, after he had parted with the shares, and could not therefore surrender them, a nullity as against the indorsee. *Lee v. Bank*, 1 Rec. 385; 2 Cin. Sup. Ct. Rep. 298.

A bank has no lien on its debtor's stock in the bank. Hence, where he pledged the stock for a loan but no transfer on the bank's books was made, a government agent afterward winding up the bank as insolvent, after its debts are paid, must apply assets to the pledgee and not to the pledgor's debt to the bank. Contra, as to stock transferred after suspension of the bank. *McConville v. Means*, 21 Bull. 133.

An assignment of stock certificates to an assignee for creditors, though not transferred on the corporation books, creates an equitable title superior to a garnishment of the right. *Haldeman v. R. R. Co.*, 2 H. 101.

Power to invest in any securities but not to loan includes securities created thereafter, and if another corporation is authorized to sell its own bonds as a commodity, a purchase thereof is not a loan under the above power. *Bank v. Jones*, 16 Ohio St. 145.

An equitable owner of stock which is in the name of another who has the certificates and claims ownership cannot hold the corporation for conversion for refusing to transfer and deliver to him the stock without a return of the certificate. The corporation need not take such risks. *Bank v. Ry. Co.*, 21 Ohio St. 221.

Refusal to transfer on the books stock held by plaintiff renders the corporation liable for conversion, though the holder is only a pledgee and the power of attorney on the back is signed in blank. *Ry. Co. v. Rawson*, 16 Bull. 423.

A buyer of stock waives the right to sue the corporation for conversion in unreasonably refusing its transfer on the books, by collecting dividends and receiving a new certificate for the old when the capital stock was reduced. *Ius. Co. v. Waters*, 1 Bull. 172.

Refusal to issue a certificate of stock to a subscriber on demand is not to be rectified by mandamus, for the remedy at law for conversion or in equity to compel it is adequate, enough above section makes it a duty to give such certificate. *Freon v. Carriage Co.*, 42 Ohio St. 50; *State v. Carpenter*, 51 Id. 83; *S. C.*, 37 N. E. Rep. 261; *State v. Carriage Co.*, 11 Bull. 163.

That the corporate business is very profitable, and the stock has no known market value, or is greatly enhanced by the good will, will not vary the rule if the actual value is ascertainable in an action for damages. *Id.*; *Freon v. Carriage Co.*, *supra*.

A delinquent subscriber's assignee, on tendering all unpaid installments and interest or compliance with other rules, is entitled to the certificate. A suit in equity lies to compel the corporation to issue it to him. *R. R. Co. v. Fink*, 41 Ohio St. 321. Limitations will run against action from the time of tender. *Id.*

For refusal to issue a certificate of stock to a subscriber there is an adequate remedy at law for its value. Mandamus will lie, especially if the ownership is in question, and the amount necessary for legal organization have been taken. *Richardson v. Mining Co.*, 1 Bull. 140.

If an executrix who is also legatee for life of stock, with power of disposition, gives a third person power of attorney to sell them and change investments at discretion, and he has the corporation transfer them to himself, and sells them, the corporation is liable to the estate for the

Shares subject to levy; power to borrow money — R. S., §§ 3255-3258.

wrongful transfer. The trustee cannot delegate his discretion, and the corporate officers knowing of the will are bound to know its contents. *Allen v. Ins. Co.*, 19 Bull. 198.

Officer of a private corporation cannot be compelled by a mandamus to perform a duty specifically enjoined by law, as where a remedy at law or in equity is adequate as to transfer of shares on books. *Freon v. Carriage Co.*, 42 Ohio St. 30.

The statute forbidding assignments of stock until all debts owing to the corporation by the stockholders are paid does not apply to a note of the stockholder purchased by the corporation with the intent of preventing the transfer and of getting hold of the stock for the benefit of others. *Bank v. Ins. Co.*, 12 Ohio St. 607.

A pledgee of stock as collateral has no right of action against the directors of the corporation for mismanagement, rendering his pledge valueless. *Barnes v. Swift*, 26 Bull. 110.

In suing a corporation for refusal to transfer stock, copies of the certificate should not be set out, and will not be so required on motion. *Bank v. Ry. Co.*, 16 Bull. 402.]

§ 3255. Shares of stock in any company shall be personal property, and when fully paid up shall be subject to levy and sale upon execution against the owner.

Personal property to be taxed. § 2731.

[Shares of stock are personal, not real estate. *Johns v. Johns*, 1 Ohio St. 350.

They are properly distinct from the capital or property of the company. *Lee v. Sturges*, 46 Ohio St. 161; *s. c.*, 19 N. E. Rep. 560; *Bradley v. Bander*, 36 Ohio St. 35; *State v. Jones*, 51 Id. 492; *s. c.*, 27 N. E. Rep. 945.

A stockholder's interest may be reached by garnishing the corporation. *Norton v. Norton*, 43 Ohio St. 509; *s. c.*, 3 N. E. Rep. 348. If the corporation itself is the attaching creditor, it may be reached by service of such process on itself. *Id.* If the stockholder has pledged his stock before garnishment of the corporation, the attachment only reaches the surplus. If the pledgee has left the stock in the pledgor's name on the books, and does not exercise his power of sale, the court may order sale, and ascertain and apply the surplus. Such attachment has priority over a later one garnishing the pledgee. Dividends in the hands of the corporation after process follow the stock and are subject to the same distribution. *Id.*

A corporation may be a garnishee in an action against a non-resident stockholder, served by publication who has conveyed his stock to defraud creditors. *Bank v. Ry. Co.*, 21 Ohio St. 221.

The legal title to all corporate property, whether capital or earnings, is in the corporation until divided among the shareholders; no valid reservation of any portion of future dividends can be made at the time of the sale of any certificate of stock. *Marble v. Bank*, 3 C. C. 464.]

§ 3256. A corporation may borrow money, not exceeding the amount of its capital stock, and issue its notes or coupon or registered bonds therefor, bearing any rate of interest authorized by law, and may secure the payment of the same by a mortgage of its real or personal property, or both.

Articles of incorporation to state amount of capital stock. § 3236. Power to convey real estate. § 3239, subd. 3. See §§ 3527-3260.

[The personal liability of directors and stockholders for abuse of powers by an excessive issue of bonds in pursuance of a scheme of fraud cannot be enforced in an action on the bonds, they being a contract of the corporation. *Raymond v. Ry. Co.*, 21 Bull. 103.

A manufacturing corporation has power to borrow for the prosecution of its business and secure the loan by mortgage. *Burt v. Rattle*, 31 Ohio St. 116. *So*, also, a gas company. *Hays v. Coal Co.*, 29 Ohio St. 330.

A mortgage and notes executed as follows is sufficient: "In witness whereof, said company have caused their corporate seal to be attached and signed by the president, and attested by their secretary," with the official signature and corporation seal. *Hays v. Gallon Co.*, 29 Ohio St. 234.

Where a corporation agreed to give a mortgage and by mistake the mortgage was signed by the stockholders in their own names, instead of by the corporation, this is an equitable mortgage against the corporation. If the corporation duly makes a subsequent mortgage to its creditors, by its terms subject to the prior mortgage, this gives priority to the first, not only as against the second, but also as against judgment nonholders of later date than the second mortgage. This effect will follow, although part of the mortgagees assent to the second mortgage, and such assent may be an implied one, from circumstances. *Bundy v. Iron Co.*, 38 Ohio St. 300. Where the State gives the management to the directors, subject to the control of the stockholders, a mortgage signed by mistake by the stockholders in their individual names is equivalent to a direction by them to the proper officers to make a mortgage. *Id.*, 312.

If the assent of two-thirds of the stockholders is necessary to a valid mortgage by the law of the State creating the corporation, which assent is to be filed with the clerk of the county where the property is, such law applies to a mortgage of land in this State, and then the assent is to be filed with the recorder. A guaranty of payment of the mortgage by two-thirds of the stockholders is a substantial consent. *West v. Klotz*, 37 Ohio St. 428.]

§ 3257. Upon the written assent of not less than three-fourths of the stockholders, representing at least three-fourths of the capital stock of the company actually paid, any company may borrow money, not exceeding one-half of the capital stock actually paid in, on such security, by way of mortgage, or otherwise, as may be agreed upon, and at a rate of interest not exceeding that allowed by law to be contracted for, and may, in the instruments evidencing the contract, stipulate that the holders of such instruments shall have the right to convert the amount borrowed, or any part thereof, into either common or preferred stock, such stock having been provided for by the proper action and certificate of the company; and any action of the directors for borrowing money, issuing bonds, or involving an expenditure of money, shall be by a ye and nay vote, and record thereof shall be made showing the vote of each director voting upon the question.

See § 3256.

§ 3258. The stockholders of a corporation which may be hereafter formed, and such stockholders as are now liable under former statutes, shall be deemed and held liable, in addition to their stock, in an amount equal to the stock by them subscribed, or other-

wise acquired, to the creditors of the corporation, to secure the payment of the debts and liabilities of the corporation.

See Const., art. XIII, § 3.

[Where a corporation has been ousted from its franchise by the supreme court, a stockholder may still be held liable on his subscription, when sued by creditors of the corporation. *Gaff v. Flesher*, 33 Ohio St. 453.

Stockholders whose names appear on the stock-book or on stubs of stock certificates as holders of stock held subject to debts of the corporation while their names so remain. *Herrick v. Wardwell*, 50 N. E. Rep. (Ohio) 902.

If a corporation borrows money from one of its officers, giving him its note, which he sells to a bank, informing its cashier that the maker is a corporation, the doctrine that one dealing with a corporation is estopped to deny its corporate existence applies, and the bank cannot hold the stockholders liable as partners. *Bank v. Hall*, 35 Ohio St. 158; *Bank v. Lovell*, 2 C. S. C. R. 307.

Stockholders cannot resist liability to a receiver for creditors on their subscriptions on the ground that their business under the organization was illegal. *Voorhees v. Bank*, 19 Ohio, 463.

Stockholders sued on their subscriptions and double liability cannot set up that they subscribed before incorporation of the company if the stock-books show the contrary. *Royce v. Tyler*, 2 C. C. 175.

Judgment of ouster is no defense to stockholders' liability on their subscriptions in favor of creditors who dealt with the concern as a corporation. If the organization was regular, and its business was one for which a corporation could have been organized, it was a corporation *de facto*, and the ouster did not retroact. *Gaff v. Flesher*, 33 Ohio St. 107.

Misrepresentations of the promoters, even if a good defense to the company's action to collect subscriptions, is no defense to a creditor's suit thereon, or on the double liability. The parties are not in the same right. *Royce v. Tyler*, 2 C. C. 175.

Fraud in procuring a person to subscribe and pay for stock by representing that \$100,000 had already been raised, on which condition the subscription was made, is no defense as against a creditor seeking to enforce the double liability. The subscriber is estopped as against creditors. *Ryan v. Ry. Co.*, 10 Rec. 263.

A secret understanding that a note for a stock subscription was not to be enforced, but the subscription was merely nominal to create favorable appearance, is no defense as against creditor's rights. *Bates v. Lewis*, 3 Ohio St. 459.

A collateral agreement that a stock subscription may be paid in goods or land and not in money as contemplated by the charter is void as against creditors, and the subscription is as to creditors collectible in money. *Henry v. R. R. Co.*, 17 Ohio, 187; *Noble v. Callender*, 20 Ohio St. 199.

An oral agreement by a subscriber with the president that a third person will assume part of his subscription and the company will only hold him to the balance will not avail against creditors. *Nat. Bank v. Varnish Co.*, 8 C. C. 563.

Directors of a corporation who sell to it property at twice its value in payment of stock then subscribed for, are accountable on insolvency to creditors for the difference between the real value of the property and the face of the stock. *Gates v. Stone Co.*, 9 C. C. 99.

An invalid corporation is not a partnership, nor are the members liable as partners. *Bank v. Hall*, 35 Ohio St. 158; *Rowland v. Furniture Co.*, 38 Id. 269; see, also, *Bartholomew v. Bentley*, 1 Id. 37.

No creditor can get a priority in the stockholders' liability or bring a separate suit to enforce it in his own behalf. *Wright v. McCormack*, 17 Ohio St. 86. His suit should be on behalf of all creditors. *Umstead v. Buskirk*, 17 Ohio St. 113.

Parties borrowing money to pay debts for corporation are its creditors. But if some of these, with new parties, pay the loan by a new note, on the understanding that the corporation will reimburse them, they have right of contribution. *Id.*

The statutory liability is not a primary resource for payment of debts, but is collateral and conditional, and to be resorted to only when payment cannot be got by ordinary process. *Wright v. McCormack*, 17 Ohio St. 86. The corporation cannot control this liability, and an assignment of it by the corporation, though for the equal benefit of all creditors, is void. *Id.*

Set-off of debts due from corporation to a stockholder cannot be made after assignment for president against the double liability or the unpaid subscriptions. *Bank v. King Co.*, 8 C. C. 563.

A corporation cannot withhold from a stockholder what is due to him until winding up in view of apprehended insolvency, nor set up by a counterclaim on that ground, for such liability can only be enforced by an action between creditor and stockholder. *Jungkuntz v. Assn.*, 6 Bull. 428.

A stockholder's note to one creditor of a bankrupt corporation, with a proviso that it shall be a credit on the maker's liability as stockholder, as the proviso cannot affect other creditors, would be meaningless unless it is construed as a guaranty by the creditor to hold the stockholder harmless against any increase of liability on account of payment on the note, and a judgment on the note must so specify. *Beebe v. Thomas*, 2 Bull. 107.

If the assets of the corporation are not available to levy and will require time to convert into money, stockholders may be pursued without delay with a right to be reimbursed from the assets when realized. *Taylor v. Wheel Co.*, 9 Rec. 28.

Where certain defendant stockholders claim to be creditors, a reply by the corporation that they had agreed to manage the company for a time and pay certain debts, and asking an accounting of the result and damages for breach of the agreement, is not to be dismissed, for it is proper that this equitable asset be realized in this action, and reduce the liability of the stockholders. *Morris v. R. R. Co.*, 2 Cleve. 347.

A creditor's capacity to sue stockholders on their subscriptions and double liability is not taken away by the fact that he is also the corporation's assignee for benefit of creditors, although as assignee he has the legal title to the unpaid subscriptions, for the creditors have the beneficial title thereto. *Turnbull v. Salt Co.*, 24 Bull. 133.

A receiver or assignee for creditors of an insolvent Ohio corporation cannot enforce the double liability. It can only be done in a creditor's suit. *King v. Armstrong*, 59 Ohio St. 233; s. c., 34 N. E. Rep. 163; *Wright v. McCormack*, 17 Ohio St. 86.

Nor can a receiver for the voluntary dissolution of an insolvent corporation, for he has only the power of an assignee for creditors. *White v. Ingersoll*, 2 Cleve. 352.

The right to resort to the double liability does not accrue until judgment on the claim and an execution unsatisfied. *Barriek v. Gifford*, 47 Ohio St. 180; *Cowles v. Bartell*, 3 W. L. M. 41.

Failure to make the money by ordinary process is sufficient proof of exhaustion of the assets. *Wehrman v. Reakirt*, 1 C. S. C. R. 233.

Where the preliminary judgment was afterward reversed, but another judgment was obtained in another action, and was set up in an amended petition, the proceeding was sustained. There were other judgments, however, not reversed. *Royce v. Tyler*, 2 C. C. 175.

Insolvency of the corporation, shown by its having assigned for benefit of creditors, ceased business, and having no assets, dispenses with the necessity of judgment and execution before resort to the double liability. *Morgan v. Lewis*, 46 Ohio St. 1; s. c., 17 N. E. Rep. 358; *Barriek v. Gifford*, 47 Ohio St. 180; *Wills v. Reed*, 5 Bull. 79.

Merely actual insolvency is not equivalent to a judgment to permit resort to stockholders, but

any proceeding rendering judgment and execution nugatory, such as an assignment in insolvency or in bankruptcy, or a receiver in charge to wind up, renders a preliminary judgment unnecessary. *Younglove v. Line Co.*, 39 Ohio St. 663; s. c., 33 N. E. Rep. 234; *Barriek v. Gifford*, 47 Ohio St. 180; s. c., 24 N. E. Rep. 259.

But not a receivership not for insolvency or to wind up, but to run the business. *Younglove v. Line Co.*, supra.

If the plaintiff's claim is not in judgment, the stockholders can interpose only such defense as the corporation could. *R. R. Co. v. Smith*, 48 Ohio St. 219; s. c., 31 N. E. Rep. 743.

A judgment creditor of a corporation may, by creditor's bill, compel stockholders to pay unpaid subscriptions to the stock. These are debts due the corporation, and the judgment against the corporation cannot be impeached collaterally. The original mode of making calls on the stockholders cannot be pursued after insolvency of the company, and the debt must be pleaded as due without further demand. *Henry v. R. R. Co.*, 17 Ohio, 187.

A statute creating a corporation is void if it do not secure the individual liability of stockholders, either expressly or by requiring such acts of organization or otherwise as will do so. Merely incorporating a foreign corporation, without requiring individual members to subscribe for the stock or accept the charter, does not secure recourse on the stockholders. *State v. Sherman*, 22 Ohio St. 411.

Stockholders are not personally liable for debts unless made so by enactment. *Carr v. Igcheart*, 3 Ohio St. 458.

Holders of preferred stock are subject to the statutory liability equally with holders of common stock. *R. R. Co. v. Smith*, 48 Ohio St. 219; s. c., 31 N. E. Rep. 74.

Counter from corporate existence on quo warranto is no defense to a creditor's action to enforce unpaid subscriptions to stock. *Rowland v. Furniture Co.*, 38 Ohio St. 269. In a de facto corporation the stockholder is liable both on his subscription and on his double liability, same as in a de jure corporation. Id.

A stockholder who gives his notes to creditors of the corporation at its request, and judgment is had on them, is a creditor, though he is not paid. Acceptance by the creditors of his proposition at a stockholders' meeting proved request or assent of corporation. *Burwell v. Hazard Co.*, 2 Cleve. 9. He can set off such payments against his individual liability. Id.

A pledgee of stock as collateral for a loan, with a blank power of attorney to transfer, who never had it transferred on the books of the company nor voted on it, nor exercised acts of ownership, is neither the legal or equitable owner thereof and is not liable as a stockholder to creditors. *Henkle v. Salem Co.*, 39 Ohio St. 547.

A seller of stock is not relieved from liability by causing the transfer to be entered by the secretary in a book in the company's office other than the stock-book, with the expectation that it will be entered in a book then at the secretary's home, and he appears by the stock-book to have remained owner, although he believed he had done all that was required to effect the transfer, and the company treated the buyer as owner of the stock. *Harpold v. Stobart*, 46 Ohio St. 397; s. c., 21 N. E. Rep. 637.

Transfer of stock before insolvency of corporation may be valid, though not entered on the books. And an entry on the books under an uncompleted contract to transfer will not make the nominal owner an actual one. *Wehrman v. Reakirt*, 1 C. S. C. R. 237.

Extension of time on a corporate debt does not release stockholders who, having transferred their stock, are only secondarily liable. Such rule would require the creditor to examine the books and transferee's solvency at every renewal. *Boice v. Hodge*, 51 Ohio St. 236; s. c., 37 N. E. Rep. 265.

Transfer of stock does not release the subscriber from liability for debts while he held it, although the debts were renewed without his knowledge after the transfer. *Bauk v. Varnish Co.*, 8 C. C. 563.

On renewal of a corporate note, stockholders liable for the original, but who had transferred their stock before the renewal, are not liable to contribute to the renewal. This rule does not apply to a renewal by note covering several claims, merely as a means of fixing the amount of indebtedness, and closing the corporate business. *Taylor v. Wheel Co.*, 9 Rec. 28. A judgment on such consolidated note does not merge in prior claims. Hence, it bears only the original rate of interest, and not that of the new note, and the judgment is enforceable against stockholders. Id.

A trustee in whose individual name the stock was taken is, as to creditors, personally liable. *Stewart v. Ins. Co.*, 1 Bull. 103.

An infant purchaser of stock, which he holds after majority and after insolvency of the company, is probably liable. *Hardman v. Ry. Co.*, 15 Bull. 164.

As a corporation's purchase of its own stock is void, dissatisfied stockholders who sold out to it are not thereby released from liability for subsequent debt. *Willis v. Reed*, 5 Bull. 79.

Indemnity sale of the stock and taking an indemnity against loss is no defense, no transfer on the books having been made. *Hardman v. Ry. Co.*, 15 Bull. 164.

To raise the question whether an agreement by creditors not to subject unpaid subscriptions released the double liability by releasing the fund primarily liable, the existence of such unpaid subscriptions must be affirmatively averred. *Barriek v. Gifford*, 47 Ohio St. 188; s. c., 24 N. E. Rep. 259.

The individual liability attaches in favor of creditors at the time the debt is contracted by the corporation, both under the Corporation Act and under the Street Railroad Act. Transfer of stock will not discharge the liability, but the successive holders implicitly undertake to save their assignors harmless. Existing stockholders are severally chargeable with the debts. *Brown v. Hitchcock*, 36 Ohio St. 667.

A stockholder who sells the stock, representing it to be fully paid up when it is not, is primarily liable, as between him and his vendee, for the debts incurred while he held it, to the extent that the stock is not paid for. *Gates v. Stone Co.*, 9 C. C. 99.

Stockholders are not concluded by judgments against the corporation to plead defenses peculiar to themselves, as that the creditors had waived the double liability in the bonds constituting the original claims. *Hardman v. Ry. Co.*, 18 Bull. 264. One set of creditors may show that the double liability cannot be resorted to by another set, as where the latter's claims are on bonds in which the liability was waived. Nor need the objecting creditors first show that they would lose by the allowance of the claims. Id. A waiver of the double liability in the bonds of the company cannot be changed by directors without consent of stockholders; hence, notes of the company, given by the directors to take up the bonds at seventy-five cents on the dollar, are without consideration as to the stockholders, and judgment thereon does not conclude them to resist the liability. Id.

Owners of stock at the beginning of the suit to enforce the double liability are liable for the debts, and so, though the stock of one was issued to him after the creation of the debts by the company. *Barriek v. Gifford*, 47 Ohio St. 180; s. c., 24 N. E. Rep. 259.

A present holder is liable for prior debts, and it is error to render judgment releasing him from liability on a finding that he did not own stock when the debt accrued. *Bonewitz v. Bank*, 41 Ohio St. 78.

If by reason of insolvency or non-residence any stockholder is unable to pay, his assignors, in inverse order up to the time the liability attached, are chargeable with the deficiency. *Brown v. Hitchcock*, 36 Ohio St. 667; *Mason v. Alexander*, 44 id. 318; s. c., 7 N. E. Rep. 435.

If the buyer of stock becomes insolvent, seller will be liable only for such proportion of debts existing while he held stock as his stock bears to the whole capital held by solvent stockhold-

Enforcement of stockholders' liability — R. S., §§ 3259, 3260.

ers within the jurisdiction liable for the same debts. *Harbold v. Stobart*, 16 Ohio St. 397; s. c., 21 N. E. Rep. 637.

Where a corporation is insolvent, and its assets in the hands of a receiver, a creditor may, by cross-petition, enforce the liability of the stockholders though his claim has not been reduced to judgment. *Peter v. Farrel*, 42 N. E. Rep. 690.

A gift of stock in good faith held to relieve the donor from liability for subsequently contracted debts, though the corporation and transferee were insolvent, and the gift was made to evade liability. *Peter v. Mfg. Co.*, 46 N. E. Rep. 894.

Where a firm organizes a corporation, and capitalizes the partnership property at a fictitious value, each partner is a subscriber for his proportion of the stock, and is liable on insolvency for the difference between his share of the partnership assets and his share of the corporate stock. *Gates v. Tippecanoe Stone Co.*, 57 Ohio St. 60; s. c., 48 N. E. Rep. 285.]

§ 3259. The term "stockholders," as used in the preceding section, shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another.

State not to become a stockholder. Const., art. VIII, § 4. Mining and manufacturing corporation may become stockholder, when. § 3863.

§ 3260. (As amended March 22, 1894.) A stockholder or creditor may enforce such liability by action jointly against all the holders or owners of stock, which action shall be for the benefit of all the creditors of the corporation, and against all persons liable as stockholders; and in such action there shall be found and determined the amount payable by each person liable as stockholder on all the indebtedness of the corporation, in which adjudication no costs shall be taxed to nor collected of any stockholder to an amount which, together with the amount to be paid on said indebtedness, will exceed the amount of the stock on which he is liable. Provided, That in any such action the plaintiff may file in the court a sworn statement that a stockholder or stockholders or the legal representatives of a deceased stockholder have not been summoned, giving their residence if known, and that it is impracticable to secure service of summons upon such stockholders or such legal representatives of a stockholder, and remitting from the claims of the plaintiff or of other creditors consenting, so much as may be found payable by such stockholders not served with summons except those who may be insolvent or non-resident of the State, and judgment shall be rendered against the stockholders who have been served with summons, for the pro rata amount for which they would be liable if all solvent stockholders resident of the State were served with summons; and when a creditor has prosecuted against a corporation an action of [at] law begun before any action to enforce the stockholders' liability,

and has recovered final judgment only after such an action to enforce the stockholders' liability has been prosecuted to a final decree in the court in which the action was commenced, such judgment creditor may bring a like action against the stockholders of the corporation to enforce such judgment at any time within four years after the recovery of his said judgment, but the stockholders shall not be liable for any amount in excess of that provided in section thirty-two hundred and fifty-eight.

Personal liability of stockholders. § 3258, and note; Const., art. XIII, § 3.

[In an action to enforce stockholder's double liability unpaid stock subscriptions may also be collected, although corporation has assigned for creditors, the assignee being a party and consenting. *Bank v. Varnish Co.*, 8 C. C. 563.]

A claim against stockholders on their unpaid subscriptions and a claim on their double liability are properly stated as separate causes of action. *Turnbull v. Pomeroy Co.*, 24 Bull. 133.

Averments that each defendant holds a certain number of shares without averring that he owns them, sufficiently states that he is a stockholder. *R. R. Co. v. Smith*, 48 Ohio St. 219; s. c., 31 N. E. Rep. 743.

A petition averring a street railway company to be incorporated under the laws of Ohio will be construed after judgment as averring it was under a law providing for the double liability, for no street railway law existed prior to the present Constitution. *Rider v. Fritchey*, 49 Ohio St. 285; s. c., 39 N. E. Rep. 692.

A creditor's suit against stockholders on their subscription and double liability need not aver that plaintiff's claim has been reduced to a judgment. It is sufficient to aver that the corporation is insolvent and has no property from which the claim can be collected. *Turnbull v. Pomeroy*, 24 Bull. 133. Nor need a call by the company or a demand for it by the plaintiff for payment of subscriptions be averred. They will be treated as due or the court will make the call. *Id.*

A denial of knowledge is too indefinite, for the defendant is presumed to know whether he is a stockholder. *Hardman v. Ry. Co.*, 11 Bull. 346. A denial that he is a stockholder now, or when the notes were made, is denurrable, for it does not deny as to the time the debt was incurred. *Id.* A denial of ever having subscribed to stock or had any in his possession, is denurrable, for he may have been a stockholder in other ways, as by a transfer. *Id.*

A general denial will sustain evidence that the defendant was not a stockholder because his payment was a donation and not a purchase. *Hardman v. Ry. Co.*, 15 Bull. 164.

A defense that the creditor had compromised and settled his claim before suit is bad without averring its payment, and so of a defense that he had filed his claim and asserted a lien in another State, for he can pursue as many remedies as he has. *Id.*

In a suit in a county where some of the stockholders reside, but not where the place of business of corporation is, brought prior to the enactment of above section, the stockholders served out of the county after their demurrer to jurisdiction is overruled, waived the wrong venue by consenting to a reference for trial, appearing before the referee, excepting to the report, giving notice of appeal and perfecting the appeal, and excepting to the report of the referee to the district court. It is then too late to question the jurisdiction of the appellate court. *Mason v. Alexander*, 41 Ohio St. 318; s. c., 7 N. E. Rep. 455.

Action, where brought: summons, how served. *Laumont v. Ins. Co.*, 10 Bull. 413.

The corporation should be made a party defendant. *Umsted v. Buskirk*, 17 Ohio St. 113.

Enforcement of stockholders' liability — R. S., § 3260.

The defendant stockholders have the right to require that all the stockholders shall be parties so as to enforce contribution. *Id.*

An action by one creditor against certain persons as stockholders is not denurrable if it does not appear that there are other creditors and other stockholders. *Id.*

All stockholders must be made parties, and if it does not appear that those not served could not have been served, it is error to assess the whole debt on those served. A finding that some are non-residents, without a return by the sheriff, does not show that service could not have been had. *Bonewitz v. Bank*, 41 Ohio St. 78.

A decree fixing the liability and assessing to stockholders their share is erroneous if all the stockholders within the jurisdiction are not made parties. *Lemar v. Stephens*, 27 Bull. 301.

All solvent stockholders in the jurisdiction should be brought in before final adjudication. If any are not brought in before the right against them is barred by time, the suit will not be dismissed, but the liability of those served will not be increased, but will be reckoned as if all were served in time. *Smith v. R. R. Co.*, 8 Cir. Ct. 583.

If all those were made defendants who were stockholders when the corporation became insolvent, or reasons are averred for not making them parties, although a want of prior stockholders as parties will prevent a final decree, it will not prevent a reference to a master being granted to ascertain in report who they were. *Turnbull v. Pomeroy*, 24 Bull. 133.

A defendant dissatisfied with plaintiff's delay to bring in stockholders within reach of process should bring them in himself, and cannot after long delay object to a hearing without them. *Mason v. Alexander*, 44 Ohio St. 334; s. c., 7 N. E. Rep. 435.

A defense that there are stockholders not brought in should name them. The objection can be taken when the referee comes to make the assessment or enter judgment. The same rule will apply that there are stockholders who have not paid their subscription. *Hardman v. Ry. Co.*, 15 Bull. 164.

A deficiency of parties may not be a defense if the actual parties must pay in full in any event, as where the debts exceed the stock. Thus, it is no defense that a defendant had transferred stock, before suit begun, to another not made a party, and it is no error to render judgment against other stockholders and continue to determine the liability of seller and buyer inter se, and as between them and creditors, nor is the jurisdiction ousted, although the continuance did not in terms mention the seller. *Mason v. Alexander*, 44 Ohio St. 318; s. c., 7 N. E. Rep. 435.

The liability of those who were stockholders when the suit was begun may be enforced by creditors without awaiting the adjustment of contingent liabilities of their assignors. *Kilgour v. Ry. Co.*, 11 Rec. 38; 8 Bull. 25.

Subscribers living in another county may be joined as defendants in a creditor's suit to reach them. *Erwin v. R. R. Co.*, 2 W. L. M. 41.

One who was stockholder at time a debt was incurred has a right to have those to whom he has sold his stock before the creditor got judgment against the corporation made parties to the action to enforce the double liability, as being his indemnitors, and necessary to a final settlement of all rights. *Wheeler v. Faurot*, 37 Ohio St. 26.

It is no defense that defendants became stockholders after plaintiff's claim was incurred. *R. R. Co. v. Smith*, 48 Ohio St. 219; s. c., 31 N. E. Rep. 743. Equities between assignors and assignees of the stock, all being parties, can be adjusted in the final judgment. *Id.*

Creditor's suit to enforce the double liability is one to enforce a liability created by statute, and is barred in six years after the right to sue accrues, even though the debt against the corporation is not barred until later. *Hawkins v. Furnace Co.*, 40 Ohio St. 507; *Baldwin v. Coal Co.*, 8 Bull. 296.

Time does not begin to run in favor of stockholders from actual insolvency of corporation while it is still continuing business, but from

judgment and execution. *Barrick v. Gifford*, 47 Ohio St. 180; s. c., 24 N. E. Rep. 259; *Bronson v. Schneider*, 49 Ohio St. 438; s. c., 33 N. E. Rep. 233; *Younglove v. Lime Co.*, 49 Ohio St. 661; s. c., 33 N. E. Rep. 234. But proceedings in insolvency which rendered judgment and execution nugatory, as assignments in insolvency or bankruptcy, or a receivership to wind up, constitutes the basis of the right of action and time begins to run. *Id.* But not a receivership to continue the business. *Younglove v. Lime Co.*, 49 Ohio St. 663; s. c., 33 N. E. Rep. 234.

That the plaintiff for over six years before had possession of all the company's property under a mortgage, and that it had ceased business, does not affect this rule. *Bronson v. Schneider*, 49 Ohio St. 438; s. c., 33 N. E. Rep. 233.

If the claims consist in notes of the corporation for amounts agreed on in settlements with it and the stockholders seek to falsify the settlement for fraud, of which they had knowledge more than four years ago, the statute of limitation applies. *R. R. Co. v. Smith*, 48 Ohio St. 219; s. c., 31 N. E. Rep. 743.

Limitations are prevented from running against all creditors, who may come in by a suit by one creditor to reach the double liability, for it is in effect on behalf of all who come in. *Barrick v. Gifford*, 47 Ohio St. 180; s. c., 24 N. E. Rep. 259.

A bar to the claim of one creditor does not bar the suit unless all are barred. *Hardman v. Ry. Co.*, 15 Bull. 164.

Time does not run in favor of a vendor of stock to bar his contingent liability for the amount assessed against his vendee, until failure to collect from the latter by reason of insolvency. *Kilgour v. Ry. Co.*, 11 Rec. 38; 8 Bull. 23.

Interest from the beginning of the suit included in the judgment is not error, although the total thereby exceeds the original liability. *Mason v. Alexander*, 44 Ohio St. 318; s. c., 7 N. E. Rep. 435.

Interest on double liability begins only from the beginning of the suit. *Wehrman v. Reakirt*, 1 C. S. C. R. 239; *Taylor v. Wheel Co.*, 9 Rec. 28.

Judgment against part may be recovered, leaving the action to proceed against the others if no prejudice ensues, as where all must pay in full in any event. *Mason v. Alexander*, 44 Ohio St. 334; s. c., 7 N. E. Rep. 435.

K, having taken judgment against stockholders, including H, R, and L, afterward filed a supplemental petition against B, and L, alleging that H, had been found insolvent, and had acquired his stock from B, and L, and asking judgment against them for the amount found against H. Held, the judgment is final and conclusive on K, and the other creditors, and the supplemental petition will not lie. *Bullock v. Kilgour*, 39 Ohio St. 543.

When stockholders are not liable on the same debts, assessments should be on the aggregate liability of each, and not on the residue of such liability, deducting prior assessments. *Taylor v. Wheel Co.*, 9 Rec. 28. The total assessments against successive holders of the same stock, which may, therefore, be liable on different debts existing at different periods, cannot exceed an amount equal to such stock. *Id.*

Unearned premiums should not be taken in full as a debt, for, being in small amounts, they may never be claimed. Only those actually claimed after publication of notice should be counted in determining how much stockholders must pay. *Wehrman v. Reakirt*, 1 Cin. Sup. Ct. Rep. 238.

The proceeds of sale of assets should be applied to reduce the aggregate of all debts so that all stockholders, past and present, may be benefited. *Taylor v. Wheel Co.*, 9 Rec. 43.

The equity of each stockholder to have the others share the burden will be respected, and the contribution will be equal, as far as possible, but deficits from non-residents or insolvency of others must be made up by those who can be reached without reference to their proportion of the whole stock. *Wehrman v. Reakirt*, 1 Cin. Sup. Ct. Rep. 230.

A receiver may be appointed to collect and distribute the judgments rendered against the stockholders. *Zieverink v. Kemper*, 50 Ohio St. 208; s. c., 34 N. E. Rep. 250.

Increase of capital; preferred stock — R. S., §§ 3262, 3263.

Counsel fees to a reasonable amount in enforcing the double liability may be allowed by court to plaintiff's attorneys, payable out of the proceeds of judgments. *Mason v. Alexander*, 44 Ohio St. 318; s. c., 7 N. E. Rep. 435; *Wehrman v. Reakirt*, 1 Cin. Sup. Ct. Rep. 240.

Extension of time to the corporation by a creditor does not release the stockholder's liability. They are not sureties. *Taylor v. Wheel Co.*, 9 Rec. 28.

An ouster from corporate existence is no defense to liability to stock subscriptions in a creditor's suit. *Rowland v. Furniture Co.*, 38 Ohio St. 269.

A judgment creditor of a corporation may, by creditor's bill, compel stockholders to pay unpaid subscriptions to the stock. These are debts due the corporation and the judgment against the corporation cannot be impeached collaterally. The original mode of making calls on the stockholders cannot be pursued after insolvency of the company, and the debt must be treated as due without further demand. *Henry v. R. R. Co.*, 17 Ohio, 187.]

§ 3262. (As amended April 5, 1893.) A corporation for profit, after its original capital stock is fully subscribed for, and an installment of ten per cent. on each share of stock has been paid thereon, or a corporation not for profit, having a capital stock, may increase its capital stock or the number of shares into which its capital stock is divided, by the unanimous written consent of all original subscribers, if done prior to organization, and after organization then by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, and by letter addressed to each stockholder whose place of residence is known; or such increase may be made at any meeting of the stockholders at which all the holders of such stock are present in person, or by proxy, and waive in writing such notice by publication and by letter; and also agree in writing to such increase, naming the amount of increase to which they agree; and a certificate of such action of the corporation shall be filed with the secretary of State.

See §§ 3262-3263. Fee for filing certificates. § 148a.

[One who, knowing of irregularities in proceedings to increase the stock, or unauthorized provisions, acquiesced, after subscribing for such increased stock, until the company became insolvent, cannot on that ground defeat an action to recover on his subscription, to pay debt. *Clarke v. Thomas*, 34 Ohio St. 46.

If stock is subscribed for and issued in anticipation of an increase of capital, the formal steps being subsequently made validate the promise to pay, and it cannot be canceled after getting the benefit for several years. *Latham v. Ins. Co.*, 1 Bull. 127. A subscription to shares of increased stock is enforceable by action, although the whole of the increased stock is never taken. *Clarke v. Thomas*, 34 Ohio St. 46.

The certificate that the whole of the increased stock has been taken cannot be made if all is not taken, but this is merely to afford evidence to the public before the company can do business on the basis of the increased capital. Id.

Where the capital stock had been duly increased and the stockholders decline to pay for the part apportioned to them the company's right to dispose of the stock is complete. Id.

The act of May 1, 1854, limited increase of stock "to an amount not exceeding the outlays and expenditures," and forbade its recognition unless the actual payment in money was paid. Under this act a corporation increased its stock in 1856, and with this increased capital continued business until 1887, when it failed. Held, in a creditor's suit to enforce the stockholders' double liability, it is not necessary to aver compliance with those provisions of the statute. The stockholders are estopped to object as against debts arising since the increase. *Turnbull v. Pomeroy*, 24 Bull. 133.

Shares of stock in a corporation are the individual property of the holders. If the corporation increases its capital, and instead of dividing the increase among the shareholders sells the new stock at a premium, this premium divided among the original shareholders is not a dividend, but their private gain, and hence is not subject to a tax on dividends or profits. *State v. Bank*, 10 Ohio, 91.

Directors and managing officers held not guilty of bad faith in increasing the stock and in subscribing the same at a discount, and hence the amount of the discount was not a corporate asset. *Pert v. Union Mfg. Co.*, 46 N. E. Rep. 894.]

§ 3263. Upon the assent, in writing, of three-fourths in number of the stockholders of any company, representing at least three-fourths of the capital stock of the company, the company may issue and dispose of preferred stock, and may stipulate that the holders of such stock shall be entitled to a dividend not exceeding six per centum per annum, out of the annual profits of the company, in preference to all other stockholders, and that they may convert such preferred stock into common stock of the company at their election; and upon any such increase of stock, a certificate shall be filed with the secretary of State, as provided in the preceding section.

Dividends to be paid only from surplus profits. § [3269-1]. Increase of capital stock. § 3262.

[Preferred stock issued under an act exempting it from individual liability is a loan and not stock, for otherwise the act would be unconstitutional. Hence, the words "stockholders," "dividends" and "profits," in the act mean respectively creditors, interest and income. Hence, the holders of such stock secured by mortgage have a lien upon the mortgaged property superior to general creditors. *Burt v. Rattle*, 31 Ohio St. 116.

Preferred stock and not certificates of indebtedness was authorized by the act of 1870. The holders thereof were stockholders and not creditors, and, hence, were not required to list their shares for taxation. *Miller v. Ratterman*, 47 Ohio St. 141; s. c., 21 N. E. Rep. 496.

If the resolution calls for preferred stock and refers to the above statute, and the certificates recite the same, the act becomes part of the certificate and the holders thereof will be deemed stockholders unless it is clear that a debt was intended, and was in fact created. Id.

If preferred stock is not by the act exempt from double liability, it is stock and not a loan, although the corporation may guarantee dividends and must redeem it, and although it has no voting power. *Ryan v. Ry. Co.*, 10 Rec. 263.

Unissued stock may be issued as preferred stock by agreement of stockholders without acting under above section or filing its certificate with secretary of State. This is merely common stock with a special agreement for benefits as an inducement to subscribe. *Bank v. Varnish Co.*, 8 Cir. Ct. 563.

Reduction of capital; change of bonds; ultra vires — R. S., §§ 3264-3266.

A corporation under a power to issue preferred stock has no power to issue part common and part preferred, and its tender of such common stock to a subscriber for original common stock is not good. *Bridge Co. v. Sargent*, 1 Cin. Sup. Ct. Rep. 354.

A right to vote on preferred stock may, by stipulation in its issue of certificates, be withheld. *Miller v. Ratterman*, 47 Ohio St. 141; s. c., 24 N. E. Rep. 426.

A general guaranty of dividends by a railroad company on its preferred stock, though authorized by the statute, means not a guaranty in any event but only if earned. *Id.* A mortgage by the railroad to secure such dividends is an incident to the principal obligation, and the certificates will be held to express the real intent, even though some of the stipulations in the mortgage are inconsistent therewith. *Id.*

The duty of directors who believe preferred stock to be illegal and fraudulently issued is to resist its allowance; hence, they cannot lawfully traffic in it, thus acquiring an interest to uphold it. If the selling price of the stock is reduced below its real value by the fraud of former officers, the directors as trustees should not enter a combination to buy the stock for their own benefit, and thus become interested to depress it, but should advance its value, restore confidence and advise selling holders of its real value. *R. R. Co. v. Duckworth*, 2 Cir. Ct. 538.]

§ 3264. The board of directors of any such corporation may, with the written consent of the persons in whose names a majority of the shares of the capital stock thereof stands on the books of the company, reduce the amount of its capital stock and the nominal value of all the shares thereof, and issue certificates therefor; but the rights of creditors shall not be affected or impaired thereby; and a certificate of such action shall be filed with the secretary of State.

Capital stock may be increased. § 3262. Fee for filing certificate. § 148a.

[Capital is not reduced by a corporation paying stock for a purchase of a plant and afterward rescinding and taking back the stock; but stock may be reissued. *Morgan v. Lewis*, 46 Ohio St. 7; s. c., 17 N. E. Rep. 558.]

§ 3265. A corporation which has lawfully issued, or may hereafter lawfully issue, its registered or coupon bonds, may, upon request of the holder thereof, change such registered bonds into coupon bonds, or such coupon bonds into registered bonds, either by substitution, or proper indorsement thereon; and all liens, securities, and rights which existed or accrued to such original bonds shall continue to such substituted or indorsed bonds, the same as if such substitution or indorsement had not been made.

§ 3266. No corporation shall employ its stocks, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation.

See § 3239, notes and cross-references. Purposes for which corporation can be created. § 3235. Corporation may extend operations, when. § 3853. Iron company may manufacture steel, when. § 3857.

[If corporators or officers of a corporation perpetrate a fraud—as by illegal issuance of bank bills without the statutory reserve to meet them—they are personally liable to any one injured. *Bartholomew v. Bentley*, 15 Ohio, 639.

Members of a corporation engaging the company in pursuits other than the legitimate corporate objects, as when a canal company issues bank notes, do so under the responsibility of ordinary partners, and cannot take refuge behind the franchises. *Lawler v. Walker*, 18 Ohio, 157.

Those who combine to use the charter of a corporation for purposes of swindling act for themselves and not for it, and are personally liable. *Bartholomew v. Bentley*, 1 Ohio St. 44.

If a corporation is doing a business forbidden by law to the corporation or ultra vires, all officers or stockholders who engage in or sanction it will be personally liable, and attending meetings and receiving dividends, knowing of such business, is a participation. *Medill v. Collier*, 16 Ohio St. 539. The corporation probably could not be sued. *Id.* 612.

If the stockholders of a corporation put their stock and its property into a trust, tending to the creation of a monopoly, the corporation will be ousted of the right to allow this, and power to perform it. *State v. Oil Co.*, 49 Ohio St. 137; s. c., 30 N. E. Rep. 279.

A railway company authorized to acquire land and also to buy land and material needed for the road, being otherwise unable to procure timber, has power to purchase timber land for the purpose, and the buyer from it gets a good title. *Overmyer v. Williams*, 15 Ohio, 26.

A power to build and repair water craft and carry on business connected therewith is not a power to use a wharf-boat for receiving, storing, or forwarding freight, or to carry on such last-named business. *State v. Southwestern Co.*, 23 Ohio St. 166.

Unsubscribed stock may be used by the company after its organization as property, as to pay debts or exchange for labor or property, although before organization the commissioners to open books cannot take subscriptions except for money. *R. R. Co. v. Hatch*, 1 D. 84.

An insurance company, authorized to invest its funds as the directors deem best, has no power to purchase on credit the note of the creditor in order to set it off against his claim. Such a contract is not an investment, and as it would furnish a temptation to withhold prompt payment to depress the value of the creditor's paper and buy it cheap, is opposed to the objects of the charter. *Straus v. Ins. Co.*, 5 Ohio St. 59.

A bank empowered to buy all kinds of property requisite for the convenient transaction of business may buy the assets of another bank whose charter had expired. *Stetson v. Bank*, 12 Ohio St. 577.

Ouster of a canal company and its dissolution by order of court puts an end to rights which had to use the bed of a river for the canal, and the trustees winding it up cannot convey such rights, but they revert to the proper owners. *Day v. R. R. Co.*, 44 Ohio St. 406; s. c., 7 N. E. Rep. 528.

A gas company may borrow money to accomplish the objects of its creation and may secure the loan by note and a mortgage on its property. *Hays v. Coal Co.*, 29 Ohio St. 330.

A safe deposit and trust company has capacity to act as trustee of corporation bonds and mortgages and to sue in foreclosure on the same. *Hotel Co. v. Trust Co.*, 25 Bull. 375.

A corporation only has the powers that are expressly granted, or are necessary to carry out those expressly granted. The charter is to be construed in view of the objects to be accomplished. *Straus v. Ins. Co.*, 5 Ohio St. 59; *Bonham v. Taylor*, 10 Ohio, 108. Grants of corporate power strictly construed as against the public. *Bonham v. Taylor*, 10 Ohio, 108; *State v. Gas Co.*, 13 Ohio St. 296.

A strict construction of language is proper to prevent a corporation enlarging or extending its powers, but is not so frequently applied where they seek to evade liability. *Gaff v. Flesher*, 33 Ohio St. 114.

Charter powers are strictly construed in favor of the public, but not so when third persons are

Ultra vires — R. S., § 3263.

not concerned in the actions. Restrictions may be mere conditions precedent or actual limitations. Third persons will not be affected by the former in the absence of knowledge of non-compliance, but in the latter case the act itself is forbidden. *James v. R. R. Co.*, 2 *Gaz.* 49; 2 *D.* 271.

Where corporations at one time are granted powers described by general reference to another act, a repeal and re-enactment of the latter act affects all corporations thereafter formed under the former. So held, where mining companies are given the same power to increase their stock that manufacturing companies had and the latter act is altered. *Clarke v. Thomas*, 34 *Ohio St.* 46.

A grant of power to loan to certain classes of companies is an exclusion of power to loan to any other; a prohibition and not merely a want of power, and no action will lie to recover back such loan. *Ins. Co. v. McCoy*, 6 *Rec.* 486.

Unauthorized contracts of a corporation may be divided into two classes: 1. Where it has no power to do what it promises, or to receive what is promised. 2. Where it has no power to do what it promises, but may receive what is promised. In each class, when action is brought, one of three states of fact will appear: a. Where it has performed its promise but the other party has not. b. Where the other party has performed but it has not. c. Where neither party has done all that was promised. In case 1 a, corporation cannot recover; the contract has no existence. In case 2 a, the corporation may recover for performance if it has eliminated the ultra vires element and there is no want of mutuality. In cases 1 b, and 2 b, what remains to be done is cases 1 c, and 2 c, neither party can recover because the contract is ultra vires. Recovery cannot be helped by promises of the officers. Pure assertion of law cannot give rise to an estoppel. Nor is recovery added by the fact that the consideration was conveyed to an individual as trustee for the corporation. *Vos v. Assn.*, 9 *Bull.* 194.

The legislature can alter or repeal or impose new conditions on charters, and the strict construction of grants is not necessary to protect the public, and the same rules as are applicable to any contract or statute may be adopted. *Bank v. Ins. Co.*, 41 *Ohio St.* 12.

The maker of a note payable to a corporation cannot deny the indorsee's title on the ground that the transaction by which the payee transferred it was ultra vires. He cannot dispute the regularity of the negotiations by which the note passed. *Gould v. Ins. Co.*, 8 *Bull.* 284.

A charter purporting to confer powers in excess of those authorized by law is not invalid as to the lawful franchises. *Ry. Co. v. Toledo Ry. Co.*, 6 *Cir. Ct.* 302.

A mortgage to procure an extension of time on a pre-existing debt by a corporation insolvent in fact, but still in business, is not void as a preference if it is intended in good faith to go on, though in fact a receiver was asked for next day by another creditor. *Pamarian v. Iron Co.*, 47 *Ohio St.* 581; s. c., 26 *N. E. Rep.* 37.

Where a contract between a corporation and an individual, believed to be within the corporate powers and not expressly or impliedly forbidden, has been fully performed by one party the other is estopped to plead ultra vires. *Hays v. Coal Co.*, 29 *Ohio St.* 340.

A trading corporation's act must be viewed as to its effect and the object in view in determining whether they are ultra vires. *Bank v. Flour Co.*, 41 *Ohio St.* 552. Though it may not pay or secure a private debt of its president, yet if it owes him, it may rightfully pay him by paying or securing his debt to another. *Id.* Estoppel applies to trading corporations as to transactions not ultra vires the same as to an individual. *Id.*

A bank buying at a sheriff's sale will not be allowed to get rid of the purchase after confirmation and payment by urging want of its own power to buy. *Bank v. White, Wright*, 574.

The ultra vires issue of redeemable preferred stock, the corporation having had the benefit of sales thereof, and the then stockholders having tacitly and for a long time assented, with knowledge of the facts, will not now be held void.

It is a private, and not a public, wrong. And transferees of stock after such acts and acquiescence obtain no better title than the prior holders. *Hill v. Hotel Co.*, 25 *Bull.* 425.

A purchase of property by directors, being the stock of a mining company in which they are interested, with corporate funds raised for other purposes, is a void contract, and they are personally liable, though they are the only stockholders, for the fund is a quasi trust for creditors. *Ry. Co. v. Burke*, 19 *Bull.* 27.

A corporation cannot avoid its contracts merely because a minority of its directors are adversely interested, as where they are also directors in the other contracting companies. *Rolling v. R. R. Co.*, 34 *Ohio St.* 459. Where a board of directors consisting of thirteen persons, five of whom were directors in another company, made a seven-year contract with the other company at a meeting where only eight directors were present and two of them were members of the adversely interested company, so that less than a quorum of disinterested directors were present, if the contract is voidable, the delay of two and one-half years to elect to rescind waives the right to do so. *Id.*

Where a corporation in a suit asserts a right against a person based on an assumed franchise, such person may in defense deny the existence of the power. The remedy by quo warranto is not exclusive. *Zanessly v. Gas Co.*, 47 *Ohio St.* 1; s. c., 23 *N. E. Rep.* 55.

A corporation has no power to become a member of a partnership when this puts the control of its affairs in other hands than those of its members. *State v. Oil Co.*, 49 *Ohio St.* 185; s. c., 30 *N. E. Rep.* 279.

A corporation may become a member of an unincorporated association whose sole business is auxiliary to its business. *Pomeroy v. Davis*, 21 *Ohio St.* 559.

A note obtained or transferred, not in total want of power, but in abuse of power, is not wholly void. *Bank v. Prather*, 12 *Ohio St.* 513; *Bank v. Ins. Co.*, *Id.* 601.

Making some stock bear interest and some not is not in the power of a corporation without express grant. *R. R. Co. v. King*, 17 *Ohio St.* 542.

A power to invest in loans on "bonds" and mortgages in real estate, etc., is satisfied by a loan on notes secured by mortgage. This is a substantial compliance with the charter, and after condition broken the mortgage is enforceable. *Bank v. Ins. Co.*, 41 *Ohio St.* 1.

An insurance company authorized to loan its funds, but forbidden to use them in the business of exchange, may buy a bill of exchange as an investment, or to collect a debt. *Bank v. Ins. Co.*, 12 *Ohio St.* 501.

If a corporation authorized to acquire property under certain circumstances, purchase it in a mode or for a purpose not authorized, a stranger to the purchase not injured by it cannot object to the title of the corporation. *Ehrman v. Ins. Co.*, 35 *Ohio St.* 324.

So also, where a note and a mortgage securing it were executed in payment of stock. *Ins. Co. v. Curtis*, 35 *Ohio St.* 333.

An agreement by a corporation to buy its own stock from a stockholder, not to secure or pay a debt due to it, is ultra vires and not enforceable. *Poppin v. Greenlee Co.*, 38 *Ohio St.* 275; *State v. Assn.*, 25 *Id.* 258.

A note given by a corporation for the purchase of its own stock is void in the hands of one having notice thereof. *Hubbard v. Riley*, 3 *Bull.* 434.

Transfers of its own stock in payment of debts due from stockholders who are solvent, may be received by a bank under a power to manage and dispose of its funds as being most advantageous. It could traffic in its own stock. After several years equity will not compel a rescission, though the bank was injured by the transaction. *Taylor v. Miami Co.*, 6 *Ohio*, 176.

An executed cession of a transaction by which a corporation reacquires its own stock given in payment is valid. Thus, in a suit to enforce stockholders' liability, evidence is admissible by one of the defendants that he took the stock from the corporation in exchange for his interest in a

furnace, but the furnace not proving a success and other stockholders blaming him for the transaction, and requesting him to rescind, he settled the contention by retransferring the stock and accepting a deed for the furnace. *Morgan v. Lewis*, 46 Ohio St. 1; s. c., 17 N. E. Rep. 558.

Redeeming stock fraudulently pledged by a former officer, part of which is an overissue, but the directors believe that by getting possession of all the collateral it will realize enough to extinguish the overissue and save losses, is not ultra vires, though a company cannot traffic in its own stock. *R. R. Co. v. Duckworth*, 2 Clr. Ct. 518.

If in order to multiply votes for directors a bank sells a large amount of its own stock to a person and immediately after returns the purchase money and takes back the stock, equity will not compel the buyer to refund and take the stock if no loss attended, for equity can only punish censurable conduct by relieving injury. *Taylor v. Miami Co.*, 6 Ohio, 176.

One corporation cannot become the owner of stock in another corporation without clear statutory authority. A bank taking as collateral to a loan to a person his shares in another bank is not entitled to a transfer of them on the books of the latter, nor to an action for refusal to transfer. *Bank v. Bank*, 36 Ohio St. 350.

A corporation having issued \$50,000 worth of stock to S. for services, S. subsequently agreed to surrender the stock and receive in lieu one-fifth of the earnings of the company, and brought suit on this agreement. Held, the contract is illegal. A company cannot buy its own stock and is estopped to set up the illegality, else courts would be used to enforce an illegal transaction. *Shaw v. Ohio Co.*, 19 Bull. 292.

Denied that a railroad can acquire bonds having a voting power in another railroad for the purpose of controlling the latter. *State v. McDaniel*, 22 Ohio St. 368.

Taking stock in another corporation, either by subscription or contract, is ultra vires; hence, an agreement by a manufacturing company to take in pay for iron furnished to a railroad, forty shares of stock of the latter, is void. *Ry. Co. v. Iron Co.*, 46 Ohio St. 44; s. c., 18 N. E. Rep. 486.

The rule that a corporation cannot subscribe to the stock of another refers to original subscription to form the other, but not that it cannot invest idle funds therein, and if it does so it will be doubly liable, like any other stockholder in case of insolvency. Power to sell the property, with the consent of the majority of the members, is incident to every corporation. *Wisevill v. Church*, 14 Ohio St. 43.

On the expiration of the charter of a bank its directors have power to sell its assets to another bank without vote of the stockholders, and the directory of the latter bank can buy. *Stetson v. Bank*, 12 Ohio St. 577.

Power to convey or mortgage all its property and franchises gives no power to alienate the franchise to a corporation. Nor the right to exercise the power of eminent domain, for that was given to the corporations and not to the corporation. *Coe v. R. R. Co.*, 10 Ohio St. 372; *Atkinson v. R. R. Co.*, 15 Id. 21. Hence, the buyer at judicial sale on foreclosure acquires no corporate capacity thereby. Id.

The right to alienate property, which is an inseparable incident to its ownership, does not permit a corporation to alienate its franchises. *Coe v. R. R. Co.*, supra. The power to acquire and convey at pleasure all such real and personal estate as may be necessary or convenient to carry out the objects of the incorporation does not authorize a railroad to convey a franchise, as the franchise to be a corporation, or to construct and maintain a railroad, or to charge for transportation. And real estate acquired by eminent domain powers, being connected with the franchise, and held solely for its exercise, cannot be separated therefrom, and hence cannot be sold, and so of fixtures necessary to making the road, as tracks, bridges, culverts, depots. Id. But locomotives, cars, etc., not part of the road, but merely employed in its use, are mere personal property, alienable and liable for debts. Id.

A corporation cannot do an act under the laws of another State which is forbidden by its own. *Ewing v. Bank*, 43 Ohio St. 31; s. c., 1 N. E. Rep. 138.

If a corporation is authorized to sell its own bonds as a commodity, at any price and bearing any rate of interest, but our corporations can sell their own bonds bearing only a limited rate of interest, there is no such plain and substantial repugnancy as to render the sale here void. *Bank v. Jones*, 16 Ohio St. 145.

An enabling clause in a charter, as to the rate of interest, will not render a loan in excess thereof ultra vires. Thus, a mining corporation having power, under the act of 1875, to borrow at a rate not exceeding that allowed for natural persons, borrowed at over eight per cent., giving an eight per cent. note with sureties, which note the lender discounted. Held, the mining company is put on the same footing as natural persons, and only the excess of interest over the legal rate is void. The sureties are not released as to the amount actually advanced and six per cent. thereon. *Larwell v. Hanover Soc.*, 40 Ohio St. 274.

Where a canal company being short of funds to pay contractors raised funds by issuing notes in all respects resembling bank notes, from engraved plates on bank-note paper, and signed by the president and countersigned by the secretary, and evidently intended to circulate as money, and actually so circulating, this is in violation of the statutes against unauthorized banking, and the stockholders are individually liable for the notes. *Lawler v. Walker*, 18 Ohio, 151.]

§ 3267. A company may, by a vote of a majority of its stock, at any regular meeting of the company, increase the number of directors to any number not greater than fifteen, or decrease the number before or after such increase to any number not below five; Provided, That at any stockholders' meeting, called in the manner and as provided in section three thousand two hundred and forty-six, and notice of which has been given in accordance with the provisions thereof, any corporation, incorporated for manufacturing purposes, may, by a vote of a majority of its stock, increase the number of its directors as hereinbefore provided, who shall hold their offices respectively until the next annual election for directors, and until their successors are elected and qualified.

See § 3244, and cross-references.

§ 3268. Every corporation organized under the laws of this State shall make a statement annually of its financial condition, setting forth its assets and liabilities, and shall furnish to each stockholder a true copy of the same, together with a list of the stockholders thereof and their place of residence.

Annual report to be made, when. § 61. Annual statement to stockholders. § [3245-2]. "Stockholder" defined. § 3259.

§ 3269. The provisions of this chapter do not apply when special provision is made in the subsequent chapters of this title, but the special provision shall govern, unless it clearly appear that the provisions are cumu-

Dividends; manufacturing companies — R. S., §§ [3269-1]–[3269-4], 3855, 3856.

lative; and no corporation shall, by anything in this title, be relieved from any liability in actions now pending, or causes of action heretofore accrued.

See § 3232.

[§ 3269-1.] It shall not be lawful for the directors of any corporation organized under the laws of this State to make dividends except from the surplus profits arising from the business of the corporation.

Power of directors. § 3248, and cross-references. See §§ [3269-2], [3269-3], [3269-4].

[A corporation cannot guarantee any dividends on its stock unless they are earned, for a contract so to use the capital is against public policy and void. *R. R. Co. v. King*, 17 Ohio St. 534; *Miller v. Ratterman*, 47 Id. 158; s. c., 24 N. E. Rep. 496; *College v. Rosenthal*, 45 Ohio St. 194; s. c., 12 N. E. Rep. 665.

On sale of stock reserving a part of the next dividend in proportion to the time elapsed, to one C., by W., the president of a bank, and M., when the dividend was declared, had such part credited to himself, and the bank having been compelled to pay to C. in full, now sues M.; held, earnings up to the declaring of a dividend belong to the corporation alone, and no stockholder has any interest in them, and dividends belong to the one who hold the stock when the division is made, and no valid reservation of any part of future dividends can be made. *Marble v. Bank*, 3 C. C. 464.

A dividend may be deducted by a mutual insurance company from an unpaid assessment standing on the books against a member. *Rhodes v. Ins. Co.*, 3 C. C. 501.]

[§ 3269-2.] In the calculation of the profits of any corporation previous to a dividend, interest then unpaid, although due, on debts owing to the company, shall not be included.

See § [3269-1].

[§ 3269-3.] In order to ascertain the surplus profits, from which alone a dividend can be made, there shall be charged in the account of profit and loss, and deducted from the actual profits —

1. All the expenses paid or incurred, both ordinary and extraordinary, attending the management of the affairs and the transaction of the business of the corporation.

2. Interest paid, or then due or accrued on debts owing by the corporation.

3. All losses sustained by the corporation, and in the computation of such losses, all debts owing to the corporation shall be included which shall have remained due without prosecution, and no interest having been paid thereon for more than one year, or on which judgment shall have been recovered, and shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period; and no such corporation shall advertise a larger amount of capital stock than has actually been subscribed and paid in;

also, shall not advertise a greater dividend than what has been actually earned and credited or paid to its stockholders or members.

See § [3269-1].

[§ 3269-4.] Every director who shall violate, or be concerned in violating, any provision in the preceding sections of this act contained,* shall be liable personally to the creditors and stockholders respectively, of the corporation of which he shall be a director, to the full extent of any loss they may respectively sustain from such violation.

CHAPTER XVII.

Powers of Certain Corporations.

Sec. 3855. Manufacturing companies shall have a principal office and keep certain accounts.

3856. May extend their operations.

3857. Iron company may manufacture steel.

3862. Powers of mining and manufacturing companies.

3862. May subscribe for stock in transportation company.

§ 3855. Every manufacturing company shall establish and keep, at some place within one of the counties in which its business is carried on, a principal office, at which shall be kept accurate accounts exhibiting the financial condition of the corporation, and of its capital stock or shares, and of all its property of every description, and credits, subject to taxation, which accounts shall at all times be subject to the inspection of any assessor lawfully authorized to assess such property and credits; notice of the place where such office is established, and of any change thereof, shall be published in some newspaper of general circulation in such county; and the principal accounting officer of such company shall be a resident of this State.

See § 3236. Transfer-books to be kept. § 3254. Property to be taxed. § 2731, and cross-references.

§ 3856. A company incorporated for manufacturing purposes may, upon a vote of the holders of a majority of its stock, extend its manufacturing operations to articles in the same line of business that are not authorized by the terms of the original articles of incorporation; and after making a certificate of such vote, and specifying therein how far the manufacturing operations are to be extended, verified by the oath of its president, and filing the same in the office of the secretary of State, such company may

Use of corporate property limited to objects of creation. § 3266, and cross-references.

*§§ [3269-1]–[3269-3].

Manufacturing companies; labor; actions — R. S., §§ 3857, 3862, 3863, 4365, 4988.

manufacture and sell such articles as shall be named or otherwise provided for in such certificate.

§ 3857. Any company incorporated for manufacturing iron may, upon a vote of the holders of a majority of its stock, engage in and carry on the business of manufacturing steel in its various branches.

See § 3266, and cross-references.

§ 3862. Any company heretofore incorporated or that may hereafter be incorporated under the laws of this State, for the purpose of mining or boring for petroleum or rock oil, or coal oil, salt or other vegetable, medicinal or mineral fluid, in the earth, or for refining or purifying the same, quarrying stone, marble, or slate, mining coal, iron, copper, lead or other minerals, or manufacturing the same, or engaged in the manufacturing of articles composed in the whole of iron or part of iron and wood, or for manufacturing cotton or woolen fabrics in whole or in part, or both, and carrying on business connected with the main objects of such corporation, may, in its corporate name, take, hold and convey such real estate and personal estate as is necessary or convenient for the purpose for which it was incorporated, and may carry on its business, or so much thereof as is convenient, in any county in this State, or beyond the limits of this State, and may there hold any real or personal estate necessary or convenient for conducting the same.

Power to hold real estate. § 3239, subd. 3.

[A manufacturing corporation has power to borrow for the prosecution of its business and secure the loan by mortgage. *Burt v. Rattle*, 31 Ohio St. 116.

An Ohio railway has no power to buy the capital stock of a mining corporation, and a contract therefor is void. Mining companies may, by statute, buy stock in railways, but not vice versa. *Ry. Co. v. Burke*, 19 Bull. 27.

A power to aid another railway in construction by subscribing to its stock is not a power in the first road to buy the stock of a completed road from the stockholders. *Id.*]

§ 3863. The directors of any such company may authorize its president, or other proper officer, to purchase or subscribe for, in the name of the company, such an amount of the stocks of any railroad, or other transportation company, as they deem necessary, in order to procure proper facilities for transportation for the manufactories, mines, or other works of the company; but the written consent of the holders of two-thirds the capital stock of the company to such subscription or purchase must first be had.

General powers of corporation. § 3239, notes and cross-references; see § 3248, and cross-references.

TITLE V. POLICE REGULATIONS.

CHAPTER VIII.

Labor.

Sec. 4365. When eight hours' labor shall constitute a day.

§ 4365. In all engagements to labor in any mechanical, manufacturing or mining business, a day's work, when the contract is silent upon the subject, or where there is no express contract, shall consist of eight hours; and all agreements, contracts, or engagements in reference to such labor shall be so construed.

For provisions as to labor disputes, etc., see §§ 8754-8773.

Part Third. Remedial.

TITLE I. PROCEDURE IN COURTS OF COMMON PLEAS, AND SUPERIOR COURTS, AND IN CIRCUIT COURTS ON APPEAL.

DIVISION II. COMMENCEMENT OF ACTIONS.

Ch. 2. Time of commencing action.

5. Where action to be brought.

6. Jurisdiction by summons, publication or appearance.

7. Pleadings.

CHAPTER II.

Time of Commencing Actions.

Subdivision II'. General Provisions.

Sec. 4988. Attempt to commence action equivalent to commencement, when.

4990. If barred at place of contract, barred here.

4991. Saving in case of reversal, etc.; in case defendant is a corporation.

Subdivision IV. General Provisions.

§ 4988. (As amended March 16, 1894.) An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the party diligently endeavors to procure a service; but such attempt must be followed by service within sixty days. And if the defendant is a corporation, whether foreign or created under the laws of this State, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, and such corporation passes into the hands of a receiver before the expiration of said sixty days, then service following such attempt to commence the action may, within said sixty days, be made upon such receiver, or his cashier, treasurer, secretary, clerk or managing agent, or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such agents or officers of such receiver with the person having charge thereof; and if such corporation is a railroad company, summons may

Actions: where brought — R. S., §§ 4990, 4991, 5026-5030.

be served upon any regular ticket or freight agent of said receiver, and if there is no such agent, then upon any conductor of said receiver, in any county in the State in which such railroad is located, and the summons shall be returned as if served upon said defendant.

See § 3239, subd. 1, and cross-references.

§ 4990. If, by the laws of the State or country where the cause of action arose, the action is barred, it is also barred in this State.

§ 4991. (As amended March 16, 1894.) If, in an action commenced, or attempted to be commenced, in due time a judgment for the plaintiff be reversed, or if the plaintiff fall otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant. And if the defendant is a corporation, whether foreign or created under the laws of this State, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, and such corporation passes into the hands of a receiver before the expiration of said year, then service to be made within said year following such original service or attempt to commence the action may be made upon such receiver or his cashier, treasurer, secretary, clerk or managing agent, or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such agents or officers of such receiver with the person having charge thereof, and if such corporation is a railroad company, summons may be served upon any regular ticket or freight agent of said receiver, and if there is no such agent, then upon any conductor of such receiver, in any county in the State in which such railroad is located, and the summons shall be returned as if served upon said defendant.

See § 3239, subd. 1, and cross-references.

CHAPTER V.

Where Action to be Brought.

- Sec. 5026. Against domestic corporations.
 5027. Against railroad and stage companies.
 5028. Against turnpike company.
 5029. This chapter does not apply, when.
 5030. Further provisions as to foreign corporations.
 5033. Change of venue in suit by or against a corporation.

§ 5026. (As amended April 19, 1898.) An action other than one of those mentioned in the first four sections of this

chapter,* against a corporation created under the laws of this State, may be brought in the county in which such corporation is situate, or has, or had its principal office or place of business, or in which any corporation has an office or agent, or in any county in which a summons may be served upon the president, chairman or president of the board of directors or trustees or other chief officer; but if such corporation is an insurance company, the action may be brought in the county wherein the cause of action or some part thereof, arose; and if such corporation be organized for the purpose of mining, either exclusively, or in connection with other business, the action may be brought in any county where such corporation owns or operates a mine or mines, and the cause of action, or some part thereof, arose.

See § 3239, subd. 1, and cross-references.

[Above section was not intended to apply to statutory actions in which a different rule had been specially authorized. *Muskingum Co. v. Toledo*, 15 Ohio St. 411.]

§ 5027. An action against the owner or lessee of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as carrier, and an action against a railroad company, may be brought in any county through or into which such road or line passes.

See § 3239, subd. 1, and cross-references.

[A railroad company may be sued in any county into which it runs, without regard to the nature of the cause of action. *Ry. Co. v. Jewett*, 37 Ohio St. 649.

A railroad company operating in a county only by a leased line can be sued therein under above section. The nature of its title is not material. *Ry. Co. v. McLean*, 1 Cir. Ct. 112.]

§ 5028. An action other than one of those mentioned in the first four sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies.

§ 5029. When the charter of a corporation created under the laws of this State prescribes the place where suit must be brought, that provision shall govern.

See § 3239, subd. 1, and cross-references.

§ 5030. An action other than one of those mentioned in the first four sections of this chapter, against a non-resident of this State, or a foreign corporation, may be brought in any county in which there is property of, or debts owing to, the defendant, or where such defendant is found; but if the defend-

* Actions relating to real property.

ant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose.

See § 3239, subd. 1, and cross-references.

[The words "foreign corporation," in attachment cases, construed. *Boley v. Ohio, etc., Co.*, 12 Ohio St. 139.]

A court can acquire no jurisdiction against a non-resident of the State, unless he be personally served or appear, except the action be one in which service by publication can be made. *William v. Welton*, 28 Ohio St. 451.

Above section gives additional remedy. *Handy v. Ins. Co.*, 37 Ohio St. 366.]

§ 5033. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties.

See § 3239, subd. 1, and cross-references.

CHAPTER VI.

Jurisdiction by Summons, Publication or Appearance.

Subdivision I. Actual Service.

Sec. 5044. How served upon corporation.

5044a. On receivers of corporations.

5045. On insurance company.

5046. On foreign corporation.

Subdivision II. Constructive Service.

Sec. 5048. Service by publication may be made, when.

5052. Personal service out of the State.

5052a. Service, how made when officer, agent or director is a non-resident.

Subdivision I. Actual Service.

§ 5044. A summons against a corporation may be served upon the president, mayor, chairman or president of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof; and if such corporation is a railroad company, whether foreign, or created under the laws of this State, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, the summons may be served upon any regular ticket or freight agent thereof; or, if there is no such agent, then upon any conductor, in any county in this

State in which such railroad is located, or through which it passes; but if the defendant is an incorporated river transportation company, whether organized under the laws of this or another State, the service of a summons may be upon the master, or other chief officer, of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it transacts business.

§ 5044a. (Enacted April 26, 1898.) When the property in this State of any foreign corporation, railroad or otherwise, is in the possession or control of a receiver appointed by any court, State or federal, at the commencement of any action against said corporation, summons may be served upon any agent of the receiver upon whom valid service could be made under any other provision of this chapter, if the agent was the agent of the corporation itself.

See § 3239, subd. 1, and cross-references. Service of summons on corporation. § 6477.

[Service upon the members of the last acting board of directors of a defunct corporation is sufficient. *Warner v. Callender*, 20 Ohio St. 190.]

When service is made upon a subordinate officer, it must appear from the return that the chief officer of the corporation could not be found. *Fee v. Big S. I. Co.*, 13 Ohio St. 563. See *R. Co. v. Orme*, 1 C. C. 511; *Caldwell v. Harrison*, 2 id. 10.]

§ 5045. When the defendant is an insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 3239, subd. 1, and cross-references. Service of summons on insurance corporation. § 6479.

§ 5046. When the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 3239, subd. 1, and cross-references. § 6480.

[What constitutes a "managing agent" within meaning of above section. *Am. Ex. Co. v. Johnson*, 17 Ohio St. 641.]

When filing motion is a voluntary appearance. *Handy v. Ins. Co.*, 37 Ohio St. 366.]

Subdivision II. Constructive Service.

§ 5048. Service may be had by publication in either of the following cases:

* * * * *

3. In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this State, or the defendant's place of residence is unknown, and in actions against a corporation incorporated under the laws of this State, which has failed to elect officers, or to appoint an agent, upon whom service of summons can

Service of summons; pleadings; judgment — R. S., §§ 5052, 5052a, 5102, 5103, 5340, 5341.

be made, as provided by section five thousand and forty-four, and which has no place of doing business in this State.

4. In actions which relate to, or the subject of which is, real or personal property in this State, when a defendant has or claims a lien thereon, or an actual or contingent interest therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State, or a foreign corporation, or his place of residence cannot be ascertained.

* * * * *

In any such case, when the residence of a defendant is known, it must be stated in the publication; immediately after the first publication, the party making the service shall deliver to the clerk copies of the publication, with the proper postage, and the clerk shall mail a copy to each defendant, directed to his residence named therein, and make an entry thereof on the appearance docket; and in all other cases, the party who makes the service, his agent or attorney, shall, before the hearing, make and file an affidavit that the residence of the defendant is unknown, and cannot, with reasonable diligence, be ascertained.

See § 3239, subd. 1, and cross-references.

§ 5052. When service may be made by publication, personal service of a copy of the summons and petition may be made out of the State.

§ 5052a. Whenever it shall be made to appear to the satisfaction of any court of record in this State, in any action now pending, or hereafter to be brought therein, that any one named as a party defendant is a corporation organized under the laws of the State of Ohio, owning or otherwise interested in real or personal property within the jurisdiction of such court, is a proper party therein, and that there is no officer, agent, or director of such corporation within the State of Ohio upon whom service of summons in said action can be made. It shall be lawful for said court to authorize any person residing in or out of the State to make service of summons on such corporation by delivering to the last known president, or other chief officer or director of such corporation, a copy of the summons therein, and the person making such service shall make affidavit thereto, and forthwith make return to the clerk. That whenever service of summons shall have been so made, the said service shall have the same effect, and shall be taken and held as if made upon said corporation in this State by personal service of such summons upon the proper officer, agent, or director of such corporation upon whom a service of summons is now authorized by law to be made in other cases.

See § 3239, subd. 1, and cross-references.

CHAPTER VII.

Pleadings.

Subdivision VI. General Rule.

Sec. 5102. Pleading to be subscribed and verified.
5103. Verification not required, when.

Subdivision VI. General Rules.

§ 5102. Every pleading and motion must be subscribed by the party or his attorney, and every pleading of fact, except as provided in the next section, must be verified by the affidavit of the party, his agent or attorney; when a corporation is the party, the verification may be made by an officer thereof, its agent or attorney: * * *

Affidavit in petition for dissolution. § 5053.

§ 5103. The verification mentioned in the preceding section shall not be required to the answer * * * in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution.

DIVISION IV. JUDGMENT.

CHAPTER V.

Judgment for Costs, and Its Enforcement.

Sec. 5340. Security for costs must be given, when.
5341. Action dismissed for want of security.

§ 5340. The plaintiff, if a non-resident of the county in which the action is brought, or a partnership suing by its company name, must furnish sufficient security for the costs; the surety must be a resident of the county, and approved by the clerk, and his obligation shall be complete by indorsing the summons, or signing his name on the petition, as surety for costs; he shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other court to which it may be carried, and for all costs which may be taxed against the plaintiff in such action, whether he obtained judgment or not; but the plaintiff may deposit with the clerk of the court such sum of money, as security for costs in the case as, in the opinion of the clerk, will be sufficient for the purpose; and the clerk may, on motion of the defendant, and if satisfied that such deposit is not sufficient, require the same to be increased, or personal security to be given. * * *

See § 3239, subd. 1, and cross-references.

§ 5341. If security for costs be not given in a case mentioned in the preceding section, the court shall, at any time before the commencement of the trial, on motion of the defendant, and notice to the plaintiff, dis-

miss the action, unless in a reasonable time, which may be allowed by the court, security be given.

DIVISION VI. PROVISIONAL REMEDIES.

Ch. 2. Attachment.
5. Receivership.

CHAPTER II.

Attachment.

Subdivision I. Grounds of Attachment.

Sec. 5521. Plaintiff may have attachment, when.

Subdivision II. How Attachment Obtained.

Sec. 5523. Undertaking required, when.

Subdivision III. Execution and Return Thereof.

Sec. 5530. Service on garnishee.
5534. How garnishee served.

§ 5521. (As amended March 2, 1891.) In a civil action for the recovery of money, the plaintiff may, at or after the commencement thereof, have an attachment against the property of the defendant, upon the grounds herein stated:

1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this State; or, * * * But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this State for any other claim other than a debt or demand arising upon contract, judgment, or decree, or for causing death or a personal injury by a negligent or wrongful act.

Affidavit for attachment, what to contain.
§ 6489. See § 3239, subd. 1. and cross-references.

[The attachment laws of 1824 applied only to natural persons, and not to foreign corporations. *Stickney v. Bank*, 1 W. L. J. 563.
A wrongful preference of a creditor by a corporation is not a ground for attachment by another creditor, for that would be simply transferring the preference to the latter. *Stone v. Bank*, 8 C. C. 636.]

§ 5523. When the ground of the attachment is that the defendant is a foreign corporation, or a non-resident of this State, the order of attachment may be issued without an undertaking; * * *

See § 6490.

[See *Alexander v. Jacoby*, 23 Ohio St. 358; *McLain v. Simington*, 37 id. 484; *Partridge v. Jones*, 38 Ohio St. 375.]

§ 5530. When the plaintiff, his agent or attorney, makes oath, in writing, that he has good reason to believe, and does believe, that any person, partnership, or corporation in the affidavit named, has property of the defendant in his possession, describing the

same, if the officer cannot get possession of such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear in court and answer, as provided in section fifty-five hundred and forty-seven; and if the garnishee does not reside in the county in which the order of attachment was issued, the process may be served by the proper officer of the county in which the garnishee resides, or may be personally served.

How garnishee served. § 6499. See § 3239, subd. 1, and cross-references.

[A corporation of another State which has its factory and business here, may be served with summons here, and a garnishment in another county, with personal service in the county where its factory is, gives jurisdiction. *Rainey v. Iron Works*, 8 C. C. 674.

A railroad company incorporated under laws of another State, and operating a railroad in this State, may be garnished under this section. *R. R. Co. v. Peoples*, 31 Ohio St. 537.]

§ 5534. If the garnishee is a person, the copy of the order and notice shall be served, etc. * * * And if a corporation they shall be left with the president or other principal officer, or the secretary, cashier, or managing agent thereof; and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof, in any county in which the railroad is located.

See § 6499.

[Process upon a railroad company incorporated under laws of another State, and operating a road in this State, must be served in same manner as upon a domestic corporation. *R. R. Co. v. Peoples*, 31 Ohio St. 537.]

CHAPTER V.

Receivership.

Sec. 5587. When and by whom receiver appointed.
5588. Who ineligible.
5590. Powers of.

§ 5587. A receiver may be appointed by the supreme court or a judge thereof, the circuit court or a judge thereof in his circuit, the common pleas court or a judge thereof in his district, or the probate court, in causes pending in such courts respectively, in the following cases:

5. In the cases provided in this title, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of equity.

Receiver appointed on dissolution. § 5656.

[Above section does not apply to proceedings to dissolve corporations. *Bacon v. Stove Co.*, 5 Cir. Ct. 289.

Dissolution of corporation — R. S., §§ 5588, 5590, 5651.

As the statutes for proceedings to dissolve a corporation do not provide for a receiver before dissolution, the court can appoint one only upon a case being made under above section; that is, under allegations of insolvency or other facts. Such omitted allegation cannot be supplied in subsequent pleadings to cure the erroneous appointment. *Trust Co. v. Etna Iron Works*, 4 Cir. Ct. 590.

Where a court appointed a receiver to dissolve a corporation by consent of parties, lienholders subsequently made parties may move for a rescission of the order, and its refusal is a final order under above section, to which error lies without waiting for the final determination of the cause. *Trust Co. v. Etna Iron Works*, 4 Cir. Ct. 579.

Receiver of an insolvent corporation. *Clarke v. Thomas*, 34 Ohio St. 46.

Receiver of a railroad, how far liable for injuries. *Meara v. Holbrook*, 20 Ohio St. 137; *Potter v. Bunnell*, id. 150.

Where a cross-petition is filed to petition to distribute the assets of an insolvent corporation, the cross-petitioner may join a cause of action for money payable to the corporation by a stockholder with a cause of action against all the stockholders on the statutory liability. *Peter v. Farel*, 42 N. E. Rep. 690.]

§ 5588. No party, attorney, or person, interested in an action, shall be appointed receiver therein except by consent of the parties.

Who may be appointed receiver. § 5637.

§ 5590. The receiver shall have power, under the control of the court, to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect, compound for, and compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize.

Powers of receiver on dissolution. § 5658.

DIVISION VII. SPECIAL PROCEEDINGS.

Ch. 5. Dissolution of corporations.

14. To change name.

16. To cure certain defects, errors and omissions.

CHAPTER V.

Dissolution of Corporations.

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5677. Petitions under preceding section.

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5685. Judgments for or against dissolved corporations may be revived.

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5687. Directors may appoint trustees to settle corporate affairs.

5688. Duties of trustees and their removal.

§ 5651. When a majority of the directors, trustees, or other officers having the management of the concerns of any corporation, or stockholders representing not less than one-third of the capital stock of any corporation, organized under the laws of the State, discover that the stock, property, and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with it, or deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized, by a majority of the stockholders, to apply for a judgment as hereinafter provided, or when the objects of the corporation have wholly failed, or are entirely abandoned, or it is impracticable to accomplish such objects, they may apply to the court of common pleas of the county, or the superior court of the city or county, in which the principal place of conducting the business of the corporation is situate, by petition, for the dissolution of such corporation, pursuant to the provisions of this chapter.

One-fifth of stockholders may require dissolution. § 5673. Certain corporations may surrender charter. § 5674. Quo warranto proceedings. §§ 6760 et seq.

[Corporations may make voluntary assignments under the Insolvent Debtor Law, found in Rev. Stat., §§ 6335 et seq. And may assign to one of its officers. *Stetson v. Durrell*, 3 Gaz. 154.

A private corporation in this country is dissolved: 1. By death of its members. 2. By surrender of its franchises. 3. By judgment of forfeiture for non-user or abuse. *McIntire v. Mfg. Co.*, 9 Ohio, 263.

Statutory authority is essential before courts can decree dissolution of a corporation or wind it

up. *Cronin v. Potter*, 29 Bull. 54; *R. R. Co. v. Duckworth*, 2 Cir. Ct. 526.

No receiver can be appointed under above section, until after the order of court dissolving the corporation. An appointment of a receiver immediately after filing the application to dissolve ratified by the corporation is illegal and warrants an attachment for disposing of property with intent to defraud creditors. Revised Statutes, section 5587, as to receivers does not apply to proceedings to dissolve corporations. *Bacon v. Stone Co.*, 5 Cir. Ct. 289.

Any petitioner for dissolution may withdraw, subject to costs, before the court has made a finding that the owners of a fifth of the stock asked dissolution, and he cannot then be counted. *Brewing Co. v. Armstrong*, 6 Cir. Ct. 468. After the court has found that a fifth have not petitioned, any one may withdraw, and thereafter it is error to allow a stockholder to come in and be counted. *Id.*

In proceedings to dissolve the corporation, holders of specific liens are entitled to become parties, otherwise they might be deprived of their property without due course of law or a day in court. *Trust Co. v. Iron Works*, 4 Cir. Ct. 579.

A corporation formed under a statute requiring the certificate to specify where the manufacturing establishment shall be located, designated a place in L. county. About twelve years afterward, by resolution of the stockholders, the principal office was moved to Cincinnati, and all meetings were held, contracts made, stock bought and sold, and account-books kept in that city. On proceedings to dissolve corporation, which section 5651 requires to be in the county where the principal place of business is, held, the proceedings not being brought in L. county should be dismissed for want of jurisdiction on the objection of a lienholder, though the corporation and stockholders had assented to the suit. The principal place of business under section 5651 is the same as principal office under section 3855, and is the same as the location required by the statutes under which the corporation was formed. *Mercantile Co. v. Iron Works*, 4 Cir. Ct. 579.

Directors who applied for and obtained a decree dissolving the corporation are personally liable for their own costs, and this includes the fees of the master, and if execution against the corporation for such fees is returned nulla bona, the court may award execution against the directors. *Godley v. Pugh*, 29 Ohio St. 428.

The general doctrine is that property of a corporation is a trust fund for its creditors, and on dissolution they can require it to be so applied, and this right gives them an equitable lien superior to all claims except of purchasers for value without notice. *Compton v. Ry. Co.*, 45 Ohio St. 614; s. c., 16 N. E. Rep. 119; 18 id. 280.

An agreement by the solvent stockholders of an embarrassed corporation to raise a fund to pay the debts by mutual contribution is enforceable. Omission to fix the amount of each contribution does not avoid for uncertainty, but will be proportionate to the stock held by each. *Sterling v. Amstutz*, 50 Ohio St. 484; s. c., 34 N. E. Rep. 794.]

§ 5652. Such application shall contain a statement of the reasons which induce the applicants to desire a dissolution of the corporation, and there shall be annexed thereto —

1. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers, and securities relating thereto.

2. A full, just, and true account of the capital stock, if any, of the corporation, specifying the names of the stockholders, their residence, when known, the number of shares belonging to each, the amount paid in upon such shares respectively, and the amount still due thereon.

3. A statement of all the incumbrances on the property of the corporation, and of all engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor, and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated, and the sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness.

§ 5653. To every such petition there shall also be annexed an affidavit of the applicants, that the facts stated in the application, and the accounts, inventories, and statements contained therein or annexed thereto, are just and true, so far as they know, or have the means of knowing.

See § 5102.

§ 5654. Upon such petition, accounts, inventories, and affidavit being filed, an order shall be entered requiring all persons interested in the corporation to show cause, if any they have, why it should not be dissolved, before some referee or master commissioner appointed by the court, and to be named in the order, at a time and place therein to be specified, not less than three months from the date thereof; and a notice of the contents of such order shall be published once in each week, for three weeks successively, in some newspaper published and of general circulation in the county wherein the principal place of business of the corporation is situate.

§ 5655. On the day appointed in the order, the referee or master shall proceed to hear the allegations and proofs of such parties, take testimony in relation thereto, and, with all convenient speed, report the same to the court, with a statement of the property, effects, debts, credits, and engagements of the corporation, and of all other matters and things pertaining to its affairs.

§ 5656. When the report is made, if it appear to the court that the corporation is insolvent, or that a dissolution thereof will be beneficial to the stockholders, and not injurious to the public interest, or that the objects of the corporation have wholly failed, or been entirely abandoned, or that it is impracticable to accomplish such objects, a judgment shall be entered dissolving the corporation, and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved, and shall cease.

See § 5587.

§ 5657. A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver; and a receiver shall, before entering upon the duties of his appointment, give such security to the State, and in such penalty, as the court

Dissolution of corporations — R. S., §§ 5658-5664.

shall direct, conditioned for the faithful discharge of the duties of his appointment, and for the due accounting for all money received by him.

Who ineligible. § 5688.

§ 5658. Such receiver shall be vested with all the estate, real or personal, of the corporation, from the time of his having filed the security hereinbefore required, and shall be trustee of such estate for the benefit of the creditors of the corporation and its stockholders; and he shall have all the power and authority conferred by law upon trustees to whom assignments are made for the benefit of creditors.

See § 5590. Receiver subject to control of court. § 5669.

[The appointment of a receiver and a sale by him of all the property is not a dissolution of a railway company, and hence does not affect the stockholders' right to elect directors. *State v. Merchant*, 37 Ohio St. 251.]

A receiver or assignee for creditors of an insolvent corporation cannot enforce the double liability. It can only be done in a creditor's suit. *King v. Armstrong*, 50 Ohio St. 233; s. c., 34 N. E. Rep. 163; *Wright v. McCormack*, 17 Ohio St. 86. Nor can a receiver for the voluntary dissolution of an insolvent corporation, for he has only the power of an assignee for creditors. *White v. Ingersoll*, 2 Cleve. 362.

Otherwise with receiver of an insolvent national bank. *King v. Armstrong*, 50 Ohio St. 222; s. c., 34 N. E. Rep. 163.

A receiver should not join in one action all delinquent stockholders, those who reside out of the county where suit is brought as well as those who reside within it. *Smith v. Johnson*, 57 Ohio St. 486; s. c., 49 N. E. Rep. 693.]

§ 5659. If there be any sum remaining due upon any share of stock subscribed in the corporation, the receiver shall immediately proceed and recover the same, unless the person so indebted is wholly insolvent, and for that purpose may commence and prosecute an action for the recovery of such sum, without the consent of any creditor of the corporation.

See § 3243, and cross-references. Payment of stock, how enforced. § 3253.

[A judgment for the full amount of a subscription having been rendered in favor of the receiver of an insolvent corporation under above section, the court appointing him has power to restrict its collection to such part of the judgment as will be the debtor's fair proportion of what is necessary. *Clarke v. Thomas*, 34 Ohio St. 46.]

§ 5660. The receiver shall, immediately on his appointment, give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors, and in addition thereto it shall notify all persons holding any open or subsisting contract of the corporation to present the same to him, in writing and in detail, at

the time and place in such notice specified, which shall be published for three weeks in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate.

§ 5661. All sales, assignments, transfers, mortgages, and conveyances, of any part of the estate, real or personal, including things in action, of every description, made after the petition for the dissolution of the corporation is filed, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receiver appointed on such petition, and as against the creditors of the corporation.

See § 3230, subd. 3, and cross-references.

§ 5662. After the first publication of the notice of the appointment of a receiver, every person having possession of any property belonging to the corporation, and every person indebted thereto, shall account and answer to the receiver for the amount of such debt, and for the value of such property; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to such receiver, and to the property of the corporation, except as otherwise provided herein.

[If the receiver of a dissolved corporation takes no steps to have a sale by the corporation, alleged to be in fraud of creditors, set aside, a suit for the purpose by a judgment creditor, in the court that appointed the receiver, making him and the stockholders and creditors and all persons interested defendant, will be treated as an application to the court to compel the receiver to do his duty. *Furnace Co. v. Peters*, 40 Ohio St. 575.]

§ 5663. The receiver shall call a general meeting of the creditors of the corporation, within four months from the time of his appointment, at which all accounts and demands for and against the corporation, and all its open and subsisting contracts, shall be ascertained and adjusted, as fully as may be, and the amount of money in the hands of the receiver declared; and he may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration or reference.

§ 5664. If there be any open and subsisting engagements on contracts of the corporation which are in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by the corporation, or so much thereof as shall be in the same proportion to the time

which remains of any risk assumed by such engagements, as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against the receiver.

§ 5665. The receiver shall, in addition to his actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed to executors or administrators, as well as reasonable counsel fees for services rendered him.

§ 5666. The receiver shall retain out of the money in his hands a sufficient amount to pay the sums which he is hereinbefore authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements; and if any suit be pending against the corporation or the receiver, for any demand, he may retain the proportion which would belong to such demand if established, and the necessary costs of the proceedings, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

§ 5667. The receiver shall distribute the residue of the money in his hands in the payment of obligations of the corporation which have been exhibited by creditors, and ascertained, in the following order:

1. Debts entitled to a preference under the laws of the United States.

2. Mortgages, judgments, and other liens on the real estate of the corporation, in the order of their priority.

3. Debts which are liens upon the capital stock or property of the corporation, other than real estate, in the order of their priority, and the extent of the value of the stock or other property on which they are liens.

§ 5668. The receiver may, from time to time, make dividends of the money in his hands, among the creditors of the corporation, until they are paid in full; but no dividend shall be made to the stockholders of the corporation until after the final dividend to creditors; and if, after such final dividend is made, there remain any surplus in the hands of the receiver, he shall distribute the same among the stockholders of the corporation, in proportion to the respective amounts paid in by them severally on their shares of stock.

§ 5669. The receivers shall be subject to the direction and control of the court as to the time of making dividends, both to the creditors and stockholders of the corporation, and as to the time of closing up the concerns of the corporation, and rendering his final accounts, and may be compelled to account at any time; and he may be removed by the court, and any vacancy created by such removal, or by death, or otherwise, may be filled by the court.

Powers of receiver. § 5658.

§ 5670. When required by the court, the receiver shall render a full and accurate account of all his proceedings to the court, on oath, which may be referred to a referee or master commissioner to examine and report thereon; but before he renders any such account he shall insert a notice of his intention to present the same, once a week, for three consecutive weeks, in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate, specifying the time and place at which such account will be rendered.

Further accounting by receiver. § 5672.

§ 5671. The referee to whom such account is referred shall hear and examine the proofs, vouchers, and documents offered for or against the same, and shall report thereon fully to the court; and when the report is made, the court shall hear the allegations of all concerned therein, and shall allow or disallow the account, and may decree the same to be final and conclusive upon all the creditors of the corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of the corporation.

§ 5672. The receiver shall also account, from time to time, in the same manner, and with like effect, for all money which comes to his hands after such account is rendered, and for all money retained by him for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

Receiver to render an account. § 5670.

§ 5673. (As amended April 10, 1896.) When stockholders owning one-fifth or more of the paid-up stock of a corporation organized for manufacturing or mining file in the office of the clerk of one of the courts mentioned in section 5651, their petition containing the statement that the corporation is insolvent, or that the dissolution thereof will be beneficial to the stockholders, or that the objects of the corporation have wholly failed or been entirely abandoned, or that it is impracticable to accomplish such objects; or that the profits of the business are being diverted from the best interests of the stockholders equally or that the business of the corporation cannot be profitably conducted and that they therefore desire a dissolution of the corporation the court shall, if it deem it beneficial to the interest of the stockholders make an order requiring the officers of the corporation within reasonable time to file in court the inventories, accounts and statements required by section 5652 and upon the filing thereof the court shall proceed as provided in section 5654 requiring all persons interested in the corporation to show cause if any they have why such corporation should not be dissolved and the court shall, if it deem

it beneficial to the interests of the stockholders, adjudge the dissolution of the corporation in conformity with the provisions of this chapter made upon finding that the statements contained in the petition are true and upon such proceeding being had such other and further proceeding shall, in the judgment of the court, be had for the final settlement and adjustment of the affairs of the corporation as are hereinbefore provided should be had.

When corporation may petition for dissolution.
§ 5651.

§ 5674. When a majority of the directors, trustees, or other officers having the management of the concerns of any corporation, become satisfied that the objects of the corporation cannot be accomplished, and no installment of the capital stock of the corporation has been paid, and no investments have been made, and no debts incurred which are unpaid, they, or the president of the board of directors, trustees, or other officers, may call a meeting of the stockholders of the corporation, at such time and place as he or they may designate, by publication in some newspaper of general circulation in the county wherein the principal office of the corporation is located; and if a majority in amount of stockholders present at such meeting, in person or by proxy, decide that the objects of the corporation cannot be accomplished, the corporation shall thereupon be dissolved, and shall cease.

See § 5651.

§ 5675. Upon the dissolution of a corporation, by the expiration of the term of its charter, or otherwise, and unless other persons be appointed by the legislature, or by the stockholders, directors, or trustees of the corporation, or by a court of competent authority, the directors, trustees, or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name they may be known in law, and their survivors, shall be the trustees of the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the money and other property remaining, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; the persons so constituted trustees may sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of the corporation, describing it by its corporate name, and they shall be jointly and severally responsible to the creditors and stockholders of the corporation, to the extent of its property and effects that come into their hands; such trustees may be made or become parties to any action by or against the corporation; and all liens of judgments existing at

the time of the dissolution, either in favor of or against the corporation, shall continue in force in the same manner as if the dissolution had not taken place.

Power of directors. § 3248, and cross-references.

§ 5676. When the last board of directors or trustees of an expired or dissolved corporation becomes unable, by the refusal or neglect of a part of such trustees to act, or for want of a quorum, to act as trustees for closing the affairs of the corporation, any number of such last board of directors or trustees may apply to the court of common pleas of the proper county to declare vacant the places of such directors or trustees as refuse or neglect to act, and such court may empower the remaining directors or trustees, not less than two in number, or appoint any other number of persons, not exceeding three, to perform the duties of trustees under the preceding section.

§ 5677. All applications made under the preceding section shall be by petition, and the court hearing the same may, on the same petition, make needful orders against any former trustees, or against any assignees of such corporation, for the conveyance of property by them held, and for the assignment of all rights in them vested, and also for the delivery of all books and papers touching the affairs of the corporation, which order may be enforced by process, or by its terms operate as a conveyance and transfer.

§ 5678. The trustees so appointed, and all successors of such trustees, shall succeed to all the rights vested in their predecessors, whether trustees or assignees; and all securities and effects by them held or acquired, and all judgments recovered, whether in favor of the corporation to which they succeed, or in the names of the trustees of such corporation, shall inure to the succeeding trustees, and pass by operation of law as fully as if the same were assigned.

§ 5679. No action pending in any court in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether the dissolution occur by the expiration of its charter or otherwise; but all such actions may be prosecuted to final judgment by the creditors, assignees, receivers, or trustees having the legal charge of the assets of the corporation, in its corporate name.

See § 3239, subd. 1, and cross-references.

§ 5680. Upon all judgments in favor of or against any such corporation, whether such judgments exist at the time of the dissolution, or are obtained afterward in actions pending at the time of the dissolution, execution may be had, and satisfaction or performance of the same enforced, by the creditors, assignees, receivers, or trustees having the legal charge of the assets of the dis-

solved corporation, in the corporate name of the dissolved corporation.

§ 5681. The title to all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of the corporation, who may sell and dispose of the same in such manner, and upon such terms, as they deem best for the interest of the creditors and stockholders, and, upon any such sale, make a good and sufficient deed therefor.

See § 3239, subd. 3, and cross-references.

§ 5682. The trustees of any such corporation shall be subject to the control of the court of common pleas, and be liable to be sued on behalf of any person interested, on account of any neglect or omission of duty, or abuse of trust; in case of the removal of any such trustee by the court for an abuse of trust, it may appoint a suitable person to fill the vacancy; and any such trustee may, for reasonable cause, upon the application of any creditor or stockholder, be required by the court to give bond and security, in such amount, and subject to such conditions, as it may direct.

§ 5683. A corporation may, at any time after its dissolution, whether the dissolution occur by the expiration of its charter or otherwise, prosecute any action in and by its corporate name, for the use of the party entitled to receive the proceeds of such action, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued, in favor of the corporation, in the same manner, and with the like effect, as if it were not dissolved.

See § 3239, subd. 1, and cross-references.

[After forfeiture of corporate existence has been adjudged and receivers are put in possession, corporation cannot bring a suit. Only the receivers can sue in the corporate name, and they must set forth sufficient to show their character as such. *Miami Co. v. Gano*, 13 Ohio, 269.]

After a corporate charter has expired by limitation, a writ of error cannot be brought against it to reverse a judgment in its favor, for the corporation is defunct, but the trustees must be brought before the court. *Renick v. Bank*, 13 Ohio, 298.

A warrant of attorney to confess judgment may, on the expiration of its charter, be used by the trustees who are winding up. *Martin v. Bank*, 13 Ohio, 250.

The statute making the last directors of a dissolved corporation trustees to wind it up, with power to sue, means that they shall sue in the collective name, and not in their individual names. *Id.*

The act providing for actions by persons holding by assignment from a corporation since dissolved, were intended to protect the assignees from the common-law forfeiture resulting from dissolution, and should, as far as applicable, be extended to assignees holding under foreign corporations. *Stetson v. Bank*, 2 Ohio St. 167.

Our statutes allowing a foreign corporation to sue here in its own name after dissolution, by expiration of charter, were not repealed by the Corporation Law of 1852. *Stetson v. Bank*, 12 Ohio St. 577.]

§ 5684. Any such dissolved corporation may be sued by its corporate name, for or

upon any cause of action accrued, or which, but for the dissolution, would have accrued against it, in the same manner, and with the like effect, as if it were not dissolved; and all process by which an action is instituted against such corporation may be served by the sheriff, or other proper officer, by delivering to any one of the assignees, trustees, receivers, or persons having charge of its assets, a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver, or person.

See § 3239, subd. 1, and cross-references.

[A creditor may sue the corporation, although in the hands of a receiver, without making him a party, and the court has jurisdiction to render a judgment, and the judgment will be a lien on its real property. *Mather v. Tunnel Co.*, 3 C. C. 284.]

Where a corporation is liable in damages to an agent for having wrongfully discharged him from its service under a contract for a definite period, and is subsequently dissolved by the judgment of a court on the petition of its stockholders, it remains liable to the party injured, notwithstanding the dissolution. *Tiffin v. Stoehr*, 43 N. E. Rep. 279.]

§ 5685. Judgments in favor of or against a dissolved corporation, whether rendered before or after its dissolution, and which become dormant, may be revived in favor of or against it, as the case may be, in and by its corporate name, in the same manner, and with the like effect, as if the corporation were not dissolved; and in all cases of such judgments against any such corporation, the writ of summons or other process shall be served in the manner prescribed in section fifty-six hundred and eighty-four.

§ 5686. Petitions in error upon judgments may be prosecuted in favor of or against any such dissolved corporation, and by its corporate name, in the same manner, and with the like effect, as if it were not dissolved; and process thereon against it shall be served in the manner prescribed in section fifty-six hundred and eighty-four.

§ 5687. The board of directors or other officers having the control and management of any corporation in this State, may appoint three trustees to adjust and settle the affairs of such corporation, and the trustees so appointed shall be authorized to use the corporate name of the corporation, for such period as may be necessary for the adjustment and settlement of its affairs, by suit or otherwise.

See § 3248, and cross-references.

§ 5688. The trustees so appointed shall report annually to the stockholders of the corporation a full and succinct statement of its affairs; and a majority in interest of the stockholders may remove a trustee, or appoint a person to a vacancy occasioned by the death, resignation, or removal of a trustee.

Change of corporate name; cure of defects — R. S., §§ 5852, 5855-5857; 5867-5871.

CHAPTER XIV.

To Change Name.

- Sec. 5852. Corporate name may be changed.
 5855. Proceedings therefor.
 5856. Copy of order to be filed, and publication made.
 5857. Effect of change of name.

§ 5852. * * * The names of companies or associations incorporated in this State, may be changed in the manner provided in this chapter.

Name of corporation to begin and end, how.
 § 3236.

§ 5855. The directors or trustees of a corporation incorporated in this State may file a petition in the court of common pleas of the county in which its principal office is located, or, if it has no principal office, in the county in which it is situate, for a change of name of such corporation; and the court, upon being satisfied that thirty days' notice of the object and prayer of the petitioners has been given, by publication in a newspaper of general circulation in the county, and upon good cause shown, shall order the change of name as prayed for.

Amendment to articles. § 3238a.

§ 5856. A copy of the order of the court shall be filed with the secretary of State, if the articles of incorporation were filed in his office, or with the recorder of the county, if the certificate was filed in his office; and in either case a copy of the order shall be published in some newspaper of general circulation in the county.

Fee for filing. § 148a.

§ 5857. When the provisions of the last section have been complied with, such corporation shall thereafter be known by such new name, and shall have all the powers, and be subject to the same restrictions, as if no change of name had been made; and no such change of name shall affect the rights of such corporation, or of any individual, or other corporation.

CHAPTER XVI.

To Cure Certain Defects, Errors, and Omissions.

- Sec. 5867. When court must give effect to intention of parties.
 5868. Certain errors, defects, and omissions may be corrected by action.
 5869. Petition to be filed, where.
 5870. Service, how made.
 5871. Judgment of the court, and its effect.

§ 5867. When, in an instrument in writing, or in a proceeding, there is an omission, defect, or error, by reason of the inadvertence of an officer, or of a party, person, or body corporate, whereby the same is not in strict conformity with the laws of this State,

the courts of this State may give full effect to such instrument or proceeding, according to the true and manifest intention of the parties thereto.

See § 3239, subd. 1, and cross-references.

[A seal omitted from certificate of incorporation is a defect which the court can supply under above section. *Warner v. Callender*, 20 Ohio St. 190.]

Reformation of articles of incorporation, so as to make them for ten years in pursuance of the original agreement, is not in the power of a court, nor can specific performance of the agreement be had. *Cronin v. Potter's Co.*, 29 Bull. 52, 54.

Provisions of above section are permissive, and not mandatory, but it is for the court to determine under what circumstances, and on what principles of equity, it will give effect to an instrument which is invalid in law. *Hout v. Hout*, 20 Ohio St. 119.]

§ 5868. When any such error, omission, or defect occurs in an instrument or proceeding which is required to be made a matter of record, any party, person, body corporate, or persons intending and undertaking to become a body corporate, having or claiming an interest in the correction of such error, omission, or defect, may file a petition in the court of common pleas, setting forth particularly the error, defect, or omission complained of, and asking an order for the correction thereof.

§ 5869. When the record to be corrected is in any way connected with a body corporate, the petition shall be filed in the county wherein the principal office of such corporation is located, and in all other cases in the county wherein the record is kept.

§ 5870. When the application is made by a body corporate, or by persons intending and undertaking to become a body corporate, notice of the application, specifying the error, defect, or omission complained of, and the time and place of hearing the same, shall be published for six consecutive weeks, in some newspaper of general circulation in the county where the application is made; and in all other cases service shall be made in the manner prescribed by law for making service in civil actions.

§ 5871. The court, upon being satisfied that such mistake, error or omission has been made, shall grant and make an order to correct the same, which order shall be filed in the office in which such record is required to be kept; and from and after such filing, such record, and the order correcting the same, shall be received as evidence in all cases, in all courts, the same as if no such error, omission, or defect had ever existed.

TITLE III. BEFORE JUSTICES OF THE PEACE AND MAYORS.

CHAPTER I.

Commencement of Actions, and Process.

- Sec. 6477. Service of summons on corporation.
 6478. Suits before justice against railroad companies; process.
 6479. Against insurance companies.

Sec. 6480. Summons, how served on foreign corporations.

6480. Affidavit for attachment; what to contain.

6490. When undertaking must be given.

6498. Proceedings against garnishee.

6499. How garnishee served.

§ 6477. A summons against a corporation, except as hereinafter specially provided, may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof; but if the defendant be an incorporated river transportation company, whether organized under the laws of the State or another State, the service of a summons may be upon the master or other chief officer of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it may transact business.

Summons, how served on corporation. § 5044.

See § 5259, subd. 1, and cross-references.

[The Code superseded the method of serving a corporation prescribed by the Corporation Act of 1852. Hence, a return of service by copy left at the usual place of business, without showing that the proper officer could not be found, is bad. *Fee v. Iron Co.*, 13 Ohio St. 563.]

A return of summons served on B., secretary of the company, "no other chief officer being found," is valid. This sufficiently states that the other officer could not be found. *Cincinnati Co. v. Trust Co.*, 25 Bull. 375.

Joint-stock companies, with all the properties, rights, attributes, etc., of corporations are not mere partnerships, though so called in a statute, and may be regarded as corporations by the courts of this State, and served with summons as such. *State v. Express Co.*, 1 N. P. 259.

A defunct corporation may be served by service on the last acting board of directors. *Warner v. Callender*, 20 Ohio St. 190.

A joint-stock company organized in New York, and having substantially the powers of a corporation, may be served as such in Ohio. *Adams Express Co. v. State*, 44 N. E. Rep. 506.]

§ 6478. Suit may be brought before a justice of the peace against any railroad company, in the township in which the president of the company may reside, or in any township into or through which the road owned or leased by said company may be located, whether such company be foreign or created under the laws of this State, and whether the charter thereof prescribes the place where suit must be brought against it, or the manner or place of service of process thereon; and if the principal business office of the company is not kept in the township in which any such suit may be brought, it shall be the duty of the justice of the peace to issue a writ of summons against said company, directed to any constable in the township in which said suit may be brought. The constable shall, on receipt of such sum-

mons, forthwith serve the same personally upon the president of such company, if he be a resident of the county in which suit is brought, or by leaving a certified copy at his place of business, if the same be within such county; Provided, That if the president of any such company shall not be a resident of, or have a place of business within the county in which such suit shall be brought, it shall be lawful for the constable having such summons, to serve the same personally upon the person having charge of a ticket office, or on the person having charge of a freight depot, owned by or under the control of such company, if such ticket office or freight depot be situated within the county where such suit shall be brought; And, provided, further, That when such summons shall be served on either of such last described persons, it shall be done at least eight days prior to trial; but when served upon the president, as aforesaid, it may be served in accordance with the law for serving summons issued by justices of the peace; Provided, That when the president of such company does not reside, and there is no such officer or depot in said county, then it shall be the duty of the justice of the peace to issue a writ of summons directed to the sheriff of the county where the principal business office of the company is located, with an indorsement on the back of the writ, of the name of the post-office to which said writ shall be returned; and the sheriff, upon the receipt of said writ, shall forthwith serve the same personally upon the president, if found, or by leaving a copy at the business office of said company with the person having charge thereof, and immediately return the said writ to the justice of the peace issuing the same, by mail, directed to the post-office named on the back of the writ.

See § 3239, subd. 1, and cross-references.

[The manner of serving a railroad with summons by the act of 1850 is exclusive, and the statute of 1853, as to serving corporations in actions before justices, does not apply to a justice's suit against a railroad. *North v. R. R. Co.*, 10 Ohio St. 548.]

Where a foreign railroad has a running arrangement over an Ohio road, and an agent here to contract for freight transportation and transfer of freight of connecting roads, having blank bills of lading for the purpose, but there is no other agent here, service upon such agent is sufficient. The policy of the law is to facilitate service on foreign corporations. *R. R. Co. v. Trans. Co.*, 32 Ohio St. 135.

Where a railroad does business in a township, but enters it by a ferry boat only, service on a ticket agent therein in a magistrate's suit for loss of baggage gives jurisdiction under above section, though the road itself is not located therein. *Williams v. R. R. Co.*, 31 Bull. 115.]

§ 6479. Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 5045.

Actions before justices of the peace — R. S., §§ 6480, 6489, 6490, 6498, 6499.

[If the petition discloses under what act the defendant was incorporated, an averment that it is a life insurance company will not prevent demurrer for want of jurisdiction, when not sued in the county of its location. But a motion to dismiss for want of service is not the proper objection. *Rude v. Ohio Assn.*, 1 Clev. 137.]

§ 6480. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 5046.

[A foreign express company had a general superintendent in one city and a local agent in another. The latter kept an office, received and forwarded packages, and did all the usual business there of receiving and forwarding offices. Held, he is such a "managing agent" that summons can be served on him. *Express Co. v. Johnson*, 17 Ohio St. 611.]

A foreign insurance company may be served by service on a resident agent or the chief officer of the agency, no chief officer of the company being found. The special statutory modes of service on foreign insurance companies are not exclusive but cumulative. *Mohr Co. v. Lamar Ins. Co.*, 7 Bull. 341.

Service merely on the director of a foreign corporation is bad, even though he be attending to business for it here, or is a financial agent for it. Service can only be had where it has a managing agent for the ordinary transaction of its business here. *Barney v. R. R. Co.*, 1 H. 571.

An agent here of a foreign coal company merely to receive what is sent him and remit back proceeds is not a managing agent. *Gibbin v. Coal Co.*, 2 Cln. Sup. Ct. R. 75.

A dissolved foreign corporation may be served by publication. *Vallette v. Bank*, 2 H. 1.]

§ 6489. The plaintiff shall have an order of attachment against any property of the defendant (except as hereinafter provided) in a civil action before a justice of the peace, for the recovery of money, before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney, showing the nature of the plaintiff's claim, that it is just, the amount the affiant believes the plaintiff ought to recover, and that the property sought to be attached is not exempt from execution, and, if the personal earnings of the defendant are sought to be attached, that the defendant is not the head or support of a family, or that such earnings are not for services rendered within three months before the commencement of the action, or, that being earned within that time the same amount to more than one hundred and fifty dollars, and that only the excess over that amount is sought to be attached; and also the existence of some one, or more, of the following particulars:

1. That the defendant, or one of several defendants, is a corporation, having no officer upon whom a summons can be served, or place of doing business in the county, or is a non-resident of the county: Provided, That no proceedings in attachment shall be had to garnishee the salary or wages of the employe of a railroad company,

by reason of his non-residence, except before a justice in, and on account of his being a non-resident of, the county in which his liability was incurred; * * *

Plaintiff to have attachment, when, § 5521. See § 3229, subd. 1, and cross-references.

[A domestic corporation, having no office in the county, may be attached before a justice as a non-resident of the county. *Machine Co. v. Huston*, 24 Ohio St. 503.]

Foreign corporation in justice's attachment statute means foreign to the State, and not a domestic corporation outside the county. *Boley v. Ins. Co.*, 12 Ohio St. 139.]

§ 6490. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the county, the order of attachment may be issued without an undertaking. * * *

See § 5523.

§ 6498. When the plaintiff, his agent or attorney, makes oath in writing that he has good reason to believe, and does believe, that any person, partnership or corporation in the affidavit named, has property of the defendant in his possession, describing the same, if the officer cannot get possession of such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear before the justice, at the return of the order of attachment, and answer as provided in section 6500.

See § 3229, subd. 1, and cross-references.

§ 6499. If the garnishee is a person, the copy of the order and notice shall be served, etc. * * * and if a corporation, they shall be left with the president or other principal officer, or the secretary, cashier, or managing agent thereof; and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof in the county.

See §§ 5530-5534.

TITLE IV. QUO WARRANTO, ETC.

CHAPTER III.

Quo Warranto.

- Sec. 6760. Proceedings in quo warranto, against whom may be instituted.
 6761. When action in quo warranto may be brought against a corporation.
 6762. Who may commence action.
 6763. Upon whose relation.
 6764. Who to be made defendants.
 6765. Action to be brought where.
 6766. Application for leave to file petition, and notice to defendant.
 6767. Issuance and service of summons.
 6768. Service by publication.
 6769. Pleadings after petition.
 6770. Court may extend time for pleading.

Quo warranto — R. S., §§ 6760, 6761.

- Sec. 6774. Judgment where franchise found to have been usurped.
6775. Judgment where director of a corporation found to have been illegally elected.
6776. Court may order new election.
6777. Rights of person adjudged to be entitled to an office.
6778. Action for damages against party ousted.
6779. Judgment, how enforced.
6780. Judgment when corporation has forfeited its rights.
6781. Appointment of trustees of dissolved corporation.
6782. Their duties.
6783. How trustees put in possession.
6784. Judgment for costs.
6785. Proceedings to enforce judgment ordering delivery of property.
6786. When injunction allowed ancillary to proceedings in quo warranto against banking institutions.
6787. Bank directors required to give security.
6788. May be enjoined from borrowing or issuing money.
6789. Limitations of this chapter.
6790. Action for damages against officers of ousted corporation.
6791. Provisions of this chapter cumulative to other remedies.
6792. Disposition of fines.
6793. Precedence of action under this chapter.

§ 6760. A civil action may be brought in the name of the State —

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this State, or an office in a corporation created by the authority of this State.

3. Against an association of persons who act as a corporation within this State without being legally incorporated.

See § 3239, subd. 1, and cross-references.

[Quo warranto cannot be brought by persons claiming to be directors of a corporation against usurpers, on their own relation without leave of court, or independently of the attorney-general or prosecuting attorney. *State v. Smith*, 6 C. C. 410; *Crawford v. State*, 52 Ohio St. 62; s. c., 38 N. E. Rep. 614.

Where franchise to be a corporation is drawn in question, the proceedings, it seems, should be against the individuals. *State v. Cincinnati, etc.*, Co., 18 Ohio St. 262; but see *State v. Taylor*, 25 id. 279.

The title of officers of a corporation de facto can only be tried by quo warranto. *Presb. Soc. v. Smithers*, 12 Ohio St. 248.]

§ 6761. A like action may be brought against a corporation.

1. When it has offended against a provision of an act for its creation or renewal, or any act altering or amending such acts.

2. When it has forfeited its privileges and franchises by non-uses.

3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises.

4. When it has misused a franchise, privilege, or right conferred upon it by law, or

when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law.

[If a majority of stockholders use their control of the company to affect it in the same way as if done by the board of directors, and the act is ultra vires, though done in their individual capacities, quo warranto will lie against the corporation. *State v. Standard Oil Co.*, 49 Ohio St. 137; s. c., 30 N. E. Rep. 249.

Abuse or neglect of franchises to cause a forfeiture of charter must be a plain abuse or neglect of power by which the design of its creation is not fulfilled. *State v. College*, 32 Ohio St. 487.

It is not a non-user forfeiting an insurance company's charter to refuse to insure hazardous risks. *Corwin v. Urbana*, 14 Ohio, 6. A charter authorizing the lending of money on "such terms as the directors deem expedient," and saying nothing as to the rate, is not forfeited by charging more than six per cent., and the extra interest may be collected by law. *Id.*

A court may, in insolvency proceedings, suspend a corporation, but only the State can annihilate it. *Finnell v. Burt*, 2 H. 206.

A railroad operated for a private purpose only, as where it fails to construct the road named in the charter, and condemns land and builds a road unsuited to the wants of the public, and for the benefit only of mines owned by the principal stockholders, held a misuse of corporate powers, franchises and privileges. *State v. Ry. Co.*, 40 Ohio St. 504.

Non-user or abuse of corporate powers does not work a forfeiture ipso facto. The corporation subsists until ouster in a proceeding for the purpose. *State v. Bryce*, 7 Ohio, 2d pt., 83.

A forfeiture of a charter must be established by judicial action, and cannot be inquired into collaterally. *Receivers v. Denick*, 15 Ohio, 322; *Johnson v. Bentley*, 16 id. 97.

Non-user or abandonment of franchises without judicial forfeiture does not divest title to property. *Webb v. Moler*, 8 Ohio, 548.

Whether corporation should be ousted of its existence is not capable of any fixed test, but depends on the discretion of the court. *State v. Benefit Assn.*, 42 Ohio St. 579.

Where corporation has assumed franchises not granted, and the certificate of incorporation does not comply with the statute, the court will oust it from corporate existence, although being proceeded against as a corporation, this would not alone authorize such judgment. *State v. Benefit Assn.*, 29 Ohio St. 339.

A forfeiture of corporate existence will not be adjudged except under express provisions of the charter, unless the abuse or neglect is plain. *State v. College*, 32 Ohio St. 487. If the alleged abuse does not interfere with the general purpose for which the corporation was created, its existence will not be forfeited, nor will the abuse be investigated in a proceeding to forfeit, but will be left to a proceeding to oust it from the particular abuse. *Id.*

If a neglect is such as by the charter to cause a forfeiture of franchise, and the State by the attorney-general demands judgment of dissolution, the court has no discretion to refuse it on the ground of public or private interest. *State v. Canal Co.*, 23 Ohio St. 121.

Ouster from corporate existence does not retroact so as to affect or destroy a prior contract. *Gaff v. Fletcher*, 33 Ohio St. 115.

An ouster from corporate existence is no defense to liability to stock subscriptions in a creditor's suit. *Rowland v. Furniture Co.*, 38 Ohio St. 269.

In ousting from corporate existence the court cannot determine the rights and liabilities of persons not parties who have acquired or incurred them in dealing with the acting corporation. Ousting the corporation exhausts the jurisdiction of the court. *Society v. Cleveland*, 43 Ohio St. 481; s. c., 3 N. E. Rep. 357. Ousting a corporation for defect in certificate of incorporation does not retroact to affect prior dealer in good faith with the corporation. *Id.*

Quo warranto—R. S., §§ 6762, 6763, 6767-6776.

A colorable incorporation and user of franchises in good faith for a number of years may be shown as against third parties to prove it a corporation de facto, though afterward ousted. *Id.* Ultra vires acts by a board of honest and sagacious directors, without bad faith, but in error of judgment, is not ground for a receiver, there being no reason to suppose that injunction would be insufficient, and nearly all the stockholders objecting. *R. R. Co. v. Duckworth*, 2 Cir. Ct. 518.]

§ 6762. The attorney-general, or a prosecuting attorney, when directed by the governor, supreme court, or general assembly, shall commence any such action; and when, upon complaint, or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action.

[The attorney-general alone can prosecute quo warranto in the supreme court. *State v. Thompson*, 34 Ohio St. 368.

By such proceedings against a corporation, he thereby admits that it has been incorporated. *State v. Gas Light Co.*, 18 Ohio St. 284.

Judges of the supreme court, in their private capacity, have no power to direct proceedings in the nature of quo warranto. *R. R. Co. v. State*, 10 Ohio, 360.

Attorney-general may bring suit on his own relation. *State v. Anderson*, 45 Ohio St. 196; s. c., 12 N. E. Rep. 656.]

§ 6763. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section sixty-seven hundred and sixty, he may require security for costs, to be given as in other cases.

[See *State v. Anderson*, 45 Ohio St. 196; s. c., 12 N. E. Rep. 656.]

§ 6767. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action, to try their respective rights to such office or franchise.

§ 6768. An action under this chapter can be brought only in the supreme court, or in the circuit court of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situated, or has a place of business; but when the attorney-general files the petition, the action may be brought in the circuit court of Franklin county.

§ 6769. Upon application for leave to file a petition, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the journal, or the fact shall be indorsed by the judge on the petition, which shall then be filed.

§ 6770. When the petition is filed without leave and notice, a summons shall issue, and be served as in other cases; and such summons may be sent to and returned by the sheriff of any county by mail, who shall be entitled to the same fees thereon as if it had been issued and returned in his own county.

See § 5014, and cross-reference.

§ 6771. When a summons is returned not served because the defendant, or its officers or office, cannot be found within the county, the clerk shall publish, for four consecutive weeks, in a newspaper published and of general circulation in the county, and if there is no such newspaper, then in a newspaper printed in this State, and of general circulation in such county, a notice, setting forth the filing and substance of the petition; and, upon proof of such publication, the default of the defendant may be entered, and judgment rendered thereon, as if the defendant had been served with summons.

§ 6772. The defendant may demur, or file an answer, which may contain as many several defenses as he has, within thirty days after the filing of the petition, if it was filed on leave and notice, or after the return day of the summons; and the plaintiff may file a demurrer or a reply to such answer within thirty days thereafter.

§ 6773. An order may be made by the court, or a judge thereof, extending the time within which any pleading may be filed; but such order shall not work a continuance of the case.

§ 6774. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising, an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs.

Judgments in other cases. §§ 6775, 6780, 6784.

[Quo warranto, effect of prior acts. See *Society v. Cleveland*, 43 Ohio St. 181; s. c., 3 N. E. Rep. 357.]

§ 6775. When the action is against a director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election.

See § 3244, and cross-references.

§ 6776. In a case named in the last section the court may order a new election to be held, at a time and place, and by judges, appointed by the court, notice of which election, and naming the judges, shall be given

for the time and in the manner provided by law for notice of elections of directors of such corporation; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary.

§ 6777. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office, and executing any official bond required by law, take upon him the execution of the office; and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted.

§ 6778. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation.

§ 6779. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding ten thousand dollars, and imprisoned in the jail of the county until he complies with the order of the court, or is otherwise discharged by due course of law.

§ 6780. When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, and franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense, or the exercise of such power.

§ 6781. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking, payable to the State of Ohio, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust, and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

§ 6782. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations, and papers, of every description, within the custody, power, or control of the officers of the corporation, or either of them, belonging to the corporation, or in anywise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders to the extent of its property and effects which come into their hands.

§ 6783. An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

§ 6784. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation.

§ 6785. In all actions under this chapter, when the judgment is against the defendant, the court may make an order directing the defendant forthwith to deliver over the books, papers, property, money, deeds, notes, bills, and obligations, to the persons entitled thereto, or the trustees appointed to receive the same, and may send a transcript of the proceedings, including a copy of such order, to the court of common pleas of the proper county, with a special mandate directing such court to carry the same into effect; and upon complaint being made, upon affidavit, to such court of common pleas, of a neglect or refusal to comply with such order, that court shall direct an attachment, returnable forthwith, to issue for the defendant, who may be required to answer under oath touching the premises; and if it appear that the defendant so neglects or refuses, such court shall render judgment of fine or imprisonment, or both, as the court making the order might have rendered.

§ 6786. Any stockholder, or stockholders, owning not less than one-fourth of the capital stock of any banking association actually paid in, or entitled to the beneficial interest therein, may have, pending proceedings in quo warranto against such corporation, an injunction restraining the directors thereof from making any disposition of the assets of such corporation prejudicial to the inter-

Quo warranto; options on grain; bucket shops - R. S., §§ 6787-6793, 6331a, 6339-2.

ests of such stockholder or stockholders, or inconsistent with their duties as directors.

§ 6787. The court, or a judge thereof in vacation, may, upon satisfactory proof that the directors of such corporation have violated, or are about to violate, any of the franchises thereof, require them to give security to the stockholders thereof, to the satisfaction of the court or judge, for the proper discharge of their duties, and for the proper management and security of the assets; and such court or judge may enjoin such directors from paying out or issuing the notes of circulation of such bank, and from incurring any additional liabilities except for the payment of the necessary services of the officers and employees of such banking association, the amount of which, while such proceedings are pending, shall be under the control of the court.

§ 6788. Such court or judge may, on petition, enjoin such directors from borrowing or issuing, either directly or indirectly, any of the money or assets of such bank, for their individual benefit, while such proceedings are pending.

Powers of directors. § 3248, and cross-references.

§ 6789. Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter which it has used and exercised for a term of twenty years; nor shall an action be brought against an officer to oust him from his office, unless within three years after the cause of such ouster, or the right to hold the office, arose.

§ 6790. When judgment of forfeiture and ouster is rendered against a corporation because of any misconduct of the officers or directors thereof, a person injured thereby may, at any time within one year thereafter, in an action against such officers or directors, recover the damages he has sustained by reason of such misconduct.

§ 6791. Nothing in this chapter contained is intended to restrain any court from enforcing the performance of trusts for charitable purposes, at the relation of the prosecuting attorney of the proper county, or from enforcing trusts, or restraining abuses, in other corporations, at the suit of a person injured.

§ 6792. All fines collected under the provisions of this chapter shall be paid into the treasury of the proper county, for the use of the common schools within the county.

§ 6793. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the

matter is of public concern, shall, on the motion of the attorney-general or prosecuting attorney, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

Part Fourth. Penal.

TITLE I. CRIMES AND OFFENSES.

CHAPTER VIII.

Offenses Against Public Policy.

Sec. 6334a. Contracts for options on grain, cornering the market, etc.
[6339-2.] Prohibiting bucket shops; gambling in stocks, bonds, etc.; penalty.

§ 6334a. Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain, or other commodity, stock of any railroad or other company, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than twenty nor more than five hundred dollars, or confined in the county jail not exceeding six months, or both; and all contracts made in violation of this section, shall be considered gambling contracts, and shall be void; Provided, That the provisions of this law shall only be held to mean and apply to such contracts where the intent of the parties thereto is that there shall not be a delivery of the commodities sold, but only a payment of differences by the parties losing upon the rise or fall of the market.

See § 3239, subd. 2, and cross-reference.

[§ 6339-2.] It shall be unlawful for any corporation, association, chamber of commerce, board of trade, copartnership or person to keep or cause to be kept within this State any bucket shop, office or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins, or when the party buying any of such property, or offering to buy the same does not intend actually to receive the same if purchased, or to deliver the same if sold, and the keeping of all such places and any such pretended buying or selling are hereby prohibited. Any corporation or person, whether acting individually or as a member, or as an officer, agent or employee of any corporation, association or copartnership, who shall be guilty of violating this section shall,

upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500), nor less than two hundred dollars (\$200), and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above prescribed, shall upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter; and the continuance of such establishment after first conviction shall be deemed the second offense. And the foregoing provision shall apply to any "bucket shop," office or other place of business within this State, conducted in pursuance of or under any agreement or arrangement with any corporation, chamber of commerce, board of trade, association, co-partnership, or person without this State, who has or may have leased, or who has or may have the control or use of any line or wire of any telegraph, or other means of communication with such "bucket shop," office or other place of business within this State, and to all persons in any way employed or engaged in maintaining and carrying on such wagering business therein, or in connection therewith; and no person within this State shall employ or use such telegraph, or other means of communication to transmit information to such non-resident of this State of any such wagering transaction or thing prohibited by this act, and the keeping of all places hereinbefore mentioned is hereby prohibited, and such non-residents of this State, as shall cause to be violated within this State the foregoing provisions in relation to such non-residents, shall be deemed guilty of a misdemeanor committed within this State, and shall be fined or imprisoned as hereinbefore provided in this section.

Purposes for which corporation may be created.
§ 3235.

TITLE II. CRIMINAL PROCEDURE.

CHAPTER IV.

Indictment, and Proceedings Thereon.

Sec. 7231. Summons and Indictment against corporations.

§ 7231. (As amended April 28, 1890.) When an indictment is presented against a corporation, a summons commanding the sheriff to notify the accused thereof, and returnable on the seventh day after its date, shall issue on the precept of the prosecuting attorney; such summons, together with a copy of the indictment, shall be served and returned in the manner provided for service of summons upon such corporation in civil actions; and if the service cannot be made in the county where the prosecution began, then the sheriff may make service in any county of the State upon either its president, secretary, super-

intendent, clerk, cashier, treasurer, managing agent, or other chief officer, or by a copy left at any general or branch office, or usual place of doing business of such corporation, with the person having charge thereof; the corporation, on or before the return day of a summons duly served, may appear by one of its officers, or by counsel, and answer to the indictment by motion, demurrer or plea, and upon its failure to make such appearance and answer, the clerk shall enter a plea of "not guilty;" and upon such appearance being made, or plea entered, the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of.

See § 3233, subd. 1, and cross-references.

Part Fifth. Uncodified.

Ch. 11. Corporations.

20. Factories; employers, employees, etc.

CHAPTER XI.

Corporations.

Sec. 7884. Special charters not accepted or acted on, repealed.

§ 7884. All special acts of incorporation in force in this State, which have not been accepted, or acted upon, be and the same are hereby repealed.
(Enacted 1861.)

See Const., art. XIII, § 1. Articles of incorporation, amendment of, etc. § 3236, and cross-references.

CHAPTER XX.

Factories: Employers, Employees, Etc.

Subdivision I. Arbitration.

- Sec. 8754. Licensing of tribunals for voluntary adjustment of industrial disputes.
8755. Petition and petitioners; denial of license.
8756. Issuing of license.
8757. Term of tribunal; jurisdiction; vacancies, etc.
8758. Constitution and organization of tribunal.
8759. Expense of; sessions, where held.
8760. Power to administer oaths; examination of books; appointment of accountant; neither party to be represented by agents.
8761. Powers of umpire; appointment of committees; rules of order, etc.
8762. Written submission of question; oath of umpire; award, effect of, etc.
8763. Form of petition for a tribunal.
8764. Form of license.
8765. Form of submission to umpire.
8766. Umpire's reward.

Subdivision II. Health and Wages.

- Sec. 8767. Preservation of health of female employees in certain establishments.
8768. Penalty.
8769. Payment of wages of certain employees twice a month; retention of certain amounts.
8770. Penalty for refusing to pay; trial under this section.

Subdivision III. Accidents in Factories, Etc.

Sec. 8771. Manufacturers to report certain accidents to inspector of workshops.

8772. Penalty for failure to report; "manufacturer" defined.

8773. Blanks to be supplied by inspector.

Subdivision II. Arbitration.

§ [8754]. The court of common pleas of each county, or a judge thereof in vacation, shall have the power, and upon the presentation of the petition, or of the agreement hereinafter named, it shall be the duty of said court, or a judge thereof in vacation, to issue in the form hereinafter named, a license or authority for the establishment within and for each county of tribunals for voluntary arbitration and settlement of trade disputes between employers and employed in the manufacturing, mechanical, or mining industries.

Right of employes to belong to labor organization. Act No. 3, at p. 61.

§ [8755]. The said petition or agreement shall be substantially in the form hereinafter given, and the petition shall be signed by at least forty persons employed as workmen and by four or more separate firms, individuals, or corporations within the county, or by at least four employers, each of whom shall employ at least ten workmen, or by the representative of a firm, corporation, or individual employing not less than forty men in their trade or industry. Provided, That at the time the petition is presented, the judge before whom said petition is presented, may, upon motion, require testimony to be taken as to the representative character of said petitioners, and if it appears that the said petitioners do not represent the will of a majority, or at least one-half of each party to the dispute, the license for the establishment of the said tribunal may be denied, or [he?] may make such other order in this behalf, as to him shall seem fair to both sides.

[If a corporation has not adopted any seal, and the directors authorized the president to execute arbitration bonds, a scroll seal affixed by him will be prima facie assumed as obligatory, and after the award is made a rule of court, the corporation will be estopped by its acquiescence. *Western Seminary v. Blair*, 1 D. 370.]

§ [8756]. If the said petition shall be signed by the requisite number of both employers and workmen, and be in proper form and contain the names of the persons to compose the tribunal, being an equal number of employers and workmen, the judge shall forthwith cause to be issued a license substantially in the form hereinafter given, authorizing the existence of such tribunal and fixing the time and place of the first meeting

thereof, and an entry of the license so granted shall be made upon the journal of the court of common pleas of the county in which the petition originated.

§ [8757]. Said tribunal shall continue in existence for one year from the date of the license creating it, and may take jurisdiction of any dispute between employers and workmen in any mechanical, manufacturing, or mining industry or business, who shall have petitioned for the tribunal, or have been represented in the petition therefor, or who may submit their disputes in writing to such tribunal for decision. Vacancies occurring in the membership of the tribunal shall be filled by the judge or court that licensed said tribunal, from three names presented by the members of the tribunal remaining of that class in which the vacancies occur. The removal of any member to an adjoining county, shall not cause a vacancy in either the tribunal or the post of umpire. Disputes occurring in one county may be referred to a tribunal already existing in an adjoining county. The place of umpire in any of said tribunals and vacancies occurring in such place, shall only be filled by the mutual choice of the whole of the representatives, of both employers and workmen constituting the tribunal, immediately upon the organization of the same. The umpire shall be called upon to act after disagreement is manifested in the tribunal by failure during three meetings held and full discussion had. His award shall be final and conclusive upon such matters only as are submitted to him in writing and signed by the whole of the members of the tribunal, or by parties submitting the same.

§ [8758]. The said tribunal shall consist of not less than two employers or their representatives, and two workmen. The exact number, which shall in each case constitute the tribunal, shall be inserted in the petition or agreement, and they shall be named in the license issued. The said tribunal, when convened, shall be organized by the selection of one of their number as chairman and one as secretary, who shall be chosen by a majority of the members, or if such majority cannot be had after two votes, then by secret ballot, or by lot, as they prefer.

§ [8759]. The members of the tribunal shall receive no compensation for their services from the city or county, but the expenses of the tribunal, other than fuel, light, and the use of the room and furniture, may be paid by voluntary subscription, which the tribunal is authorized to receive and expend for such purposes. The sessions of said tribunal shall be held at the county seat of the county where the petition for the same was presented, and a room in the courthouse for the use of said tribunal, shall be provided by the county commissioners.

§ [8760]. When no umpire is acting, the chairman of the tribunal shall have power

to administer oaths to all witnesses who may be produced, and a majority of said tribunal may provide for the examination and investigation of books, documents, and accounts pertaining to the matters in hearing before the tribunal, and belonging to either party to the dispute; Provided, That the tribunal may unanimously direct that instead of producing books, papers, and accounts before the tribunal, an accountant agreed upon by the entire tribunal, may be appointed to examine such books, papers, and accounts, and such accountant shall be sworn to well and truly examine such books, documents, and accounts as may be presented to him, and to report the results of such examination in writing to said tribunal. Before such examination the information desired and required by the tribunal shall be plainly stated in writing and presented to said accountant, which statement shall be signed by the members of said tribunal, or by a majority of each class thereof. Attorneys-at-law or other agents of either party to the dispute, shall not be permitted to appear or take part in any of the proceedings of the tribunal, or before the umpire.

§ [8761]. When the umpire is acting he shall preside, and he shall have all the powers of the chairman of the tribunal; and his determination upon all questions of evidence, or other questions, in conducting the inquiries then pending, shall be final. Committees of the tribunal consisting of an equal number of each class may be constituted to examine into any question in dispute between employers and workmen which may have been referred to said committee by the tribunal, and such committee may hear and settle the same finally, when it can be done, by a unanimous vote; otherwise the same shall be reported to the full tribunal, and be there heard, as if the question had not been referred. The said tribunal, in connection with the umpire, shall have power to make, ordain, and enforce rules for the government of the body when in session, to enable the business to be proceeded with in order, and to fix its sessions and adjournments; but such rules shall not conflict with this statute, nor with any of the provisions of the Constitution and laws of Ohio.

§ [8762]. Before the umpire shall proceed to act, the question or questions in dispute shall be plainly defined in writing, and signed by the members of the tribunal, or a majority thereof of each class, or by the parties submitting the same; and such writing shall contain the submission of the decision thereof to the umpire by name, and shall provide that his decision thereon, after hearing, shall be final. The umpire shall be sworn to impartially decide all questions that may be submitted to him during his term of office. The submission and his award may be made in the form hereinafter given, and said umpire must make his award within ten days from the time the question

or questions in dispute are submitted to him. Said award shall be made to the tribunal; and if the award is for a specific sum of money, said award may be made a matter of record by filing a copy thereof in the court of common pleas of the county wherein the tribunal is in session. When so entered of record it shall be final and conclusive, and the proper court may, on motion of any one interested, enter judgment thereon; and when the award is for a specific sum of money, may issue final and other process to enforce the same.

§ [8763]. The form of the joint petition or agreement praying for a tribunal under this act shall be as follows:

* * * * *

§ [8764]. The license to be issued upon such petition may be as follows:

* * * * *

§ [8765]. When the tribunal agrees to submit a matter in controversy to the umpire, it may be in form as follows:

* * * * *

§ [8766]. The umpire shall make his award in writing to the tribunal, stating distinctly his decisions on the subject-matter submitted. And when the award is for a specific sum of money, the umpire shall forward a copy of the same to the clerk of the proper court.

Subdivision II. Health and Wages.

§ [8767]. Every person or corporation employing female employes in any manufacturing, mechanical or mercantile establishment in this State, shall provide suitable seats for the use of the female employes so employed, and shall permit the use of such by them when they are not necessarily engaged in the active duties for which they are not employed, and shall permit the use of such seats at all times when such use would not actually and necessarily interfere with the proper discharge of the duties of such employes.

See Act No. 1, at p. 60.

§ [8768]. Any person or corporation violating any of the provisions of this act, shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense.

§ [8769]. Every incorporated manufacturing, mining, mercantile, street railroad, telegraph, telephone, express, water company, and construction companies, or contractors building railroads, shall pay, in lawful money, or by check, draft or order, payable in lawful money, at sight or on demand, on a bank located at a distance not greater than eight miles from the place where said labor was performed, twice in each month, each and every employe engaged in its business, the wages earned by such employe to

within ten days of the date of said payment; Provided, however, That if at any time of payment any employe shall be absent from his regular place of labor, he shall be entitled to said payment at any time thereafter, during their regular business hours, upon demand; And provided, further, That said employer may retain at each payment, any amount said employe may order withheld from his or her wages for rent, powder, tools, tool sharpening, or oil, due said employer.

§ [8770]. Any corporation mentioned in section 8769 of this act, violating any of the provisions of this act, shall be punished by a fine not exceeding one hundred and not less than fifty dollars. Justices of the peace, mayors and police judges shall have final jurisdiction in all cases arising under the provisions of this act; and a corporation shall be notified by warrant to be served upon the president, secretary, treasurer, or managing agent thereof; Provided, That the defendant shall be entitled, on demand, to a trial by jury. If such prosecution be before a justice of the peace, and a trial by jury be not waived, the said justice shall issue a venire to any constable of the county, containing the names of sixteen electors of the county, to serve as jurors to try such case, and make due return thereof. Each party shall be entitled to two peremptory challenges, and shall be subject to the same challenges as jurors are subject to in criminal cases in the court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill the panel, the justice may direct the constable to summon any of the by-standers to act as jurors; but costs shall not be required to be advanced or paid by a person or an officer authorized or required by statute to prosecute such cases; and if the defendant be acquitted, or if he be convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, or police judge, before whom the case was brought, shall certify such costs to the county auditor, who shall examine, and, if necessary, correct the account, and issue his warrant to the county treasurer in favor of the respective officers to whom costs are due for the amount due to each; Provided, complaint for such violation is made within thirty days from date thereof; providing, that in pursuance of and under this act there shall not be more than one conviction of the same corporation during any two weeks. And it shall be the duty of the inspector of shops and factories, on complaint of three or more employes of such corporation, to enforce the provisions of this act.

Subdivision III. Accidents in Factories, Etc.

§ [8771]. It shall be the duty of all manufacturers of the State, to forward by mail to the chief inspector of workshops and factories, at Columbus, a report of each and every serious accident resulting in bodily injury to any person which may occur in their establishment, giving particulars of the same as fully as can be ascertained, upon blanks which shall be furnished by the chief inspector of workshops and factories. If death shall result to any employe from any such accident, said report shall contain the age, name, sex and employment of the deceased, whether married, the number of persons, if any, deprived of support in consequence thereof, and the cause of the accident, if known. If the accident has caused bodily injury of such a nature as to prevent the person injured from returning to his or her employment within six or more days after the occurrence of the accident, then the report shall contain the age, name, sex and employment of the disabled, the nature and extent of the injury received, how caused, if known, how long continuously disabled, loss of time and wages therefrom, and if possible the expenses thereby incurred in full.

§ [8772]. That any manufacturer who shall fail to comply with the requirement of this act in each case of death by accident within seven days thereafter, and in each case of injury by accident within thirty days thereafter, shall be fined in any sum not less than ten dollars nor more than fifty dollars. The term manufacturer, as applied in section 8771 and in section 8772 of this act, shall be held to mean, any person who, as owner, manager, lessee, assignee, receiver, contractor, or who, as agent of any incorporated company, makes or causes to be made any kind of goods or merchandise, or who owns, controls, or operates any street railway, laundrying establishment, or is engaged in the construction of buildings, bridges or structures, or in loading or unloading vessels, or cars, or moving heavy materials, or operating dangerous machinery, or in the manufacture or use of explosives.

§ [8773]. It shall be the duty of the chief inspector of workshops and factories, to supply all blanks necessary to make said reports, as required in this act, and to prosecute all violations of this act when the same shall come to his knowledge; Provided, That the furnishing of said blanks shall be a condition precedent to prosecution in any case.

Health of female employes; stock certificates — Acts, March 9, 1898, and April 23, 1891.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1890.

1. Relating to the preservation of the health of female employes.
2. To provide for the re-issue of lost or destroyed certificates of stock.
3. To protect employes and guarantee their right to belong to labor organizations.
4. To define and prohibit trusts and combinations.

Act 1.

AN ACT to amend section 1 of an act amended and passed March 6, 1891 (O. L., vol. 88, pp. 87, 88), and section 2, passed April 16, 1885 (O. L., vol. 82, p. 132), entitled "An act for the preservation of the health of female employes."

Section 1. Be it enacted by the general assembly of the State of Ohio, That section 1 of an act entitled "An act for the preservation of the health of females," amended and passed March 6, 1891, and section 2 of the same act, passed April 16, 1885, be so amended as to read as follows:

§ 1. That every person or corporation employing female employes in any manufacturing, mechanical or mercantile establishments in this State, shall provide suitable seat for the use of each female employe so employed, and shall permit the use of such by them when they are not necessarily engaged in the active duties for which they are employed, and shall permit the use of such seats at all times when such use would not actually and necessarily interfere with the proper discharge of the duties of such employes, and such seat shall be constructed or adjusted where practicable so as to be a fixture and not obstruct such female when actually engaged in the performance of such duties when such seat cannot be used; and the owner of the building shall provide, on the same floor, or floor immediately above or below, of the building wherein any female persons are employed, suitable and separate toilet and dressing-rooms and water-closets for the exclusive use of such female employes, and where possible, such dressing-rooms and water-closets shall be situated together, with one water-closet for every twenty-five females or less, and where there are more than twenty-five there shall be provided an additional water-closet, up to the number of fifty, and above that number in the same ratio; Provided, That no such closet for the use of females shall be placed in the basement or cellar, unless such basement or cellar is used for manufacturing, mechanical or mercantile purposes, and females are employed therein; and provided, further, that such closets, in the same ratio as above mentioned, shall be placed on the outside of such building at a distance not

to exceed twenty feet in such cities, towns and villages as are not provided with a system of water-works; unless such building is provided with a dry-closet system such closets to be kept in good sanitary condition at all times. The State inspector of factories and workshops is hereby charged with the duty of seeing that the provisions of this section are observed and enforced.

§ 2. Any person or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense.

§ 2. That section 1 of an act entitled "An act for the preservation of the health of females," as amended and passed March 6, 1891 (O. L., vol. 88, pp. 87, 88), and section 2 of the same act, passed April 16, 1885 (O. L., vol. 82, p. 132), be and the same is hereby repealed, and this act shall take effect and be in force from and after its passage.

(Passed March 9, 1898.)

See § 8767.

Act 2.

AN ACT to provide for the re-issue of lost or destroyed certificates of stock in corporations.

Section 1. Be it enacted by the general assembly of the State of Ohio, That in case any certificate of stock in any corporation be lost or destroyed, the owner thereof may file his petition in the probate court of the county where the principal business office of such corporation is located in this State, setting forth a pertinent description of such certificate, and a full statement of the facts relating to such destruction or loss, including the fact that he is the owner of such certificate, and was at the time of its loss or destruction, and had not assigned, transferred or disposed of the same, and that the same was not pledged to any one, or if so, stating to whom, and the facts relating thereto, and such petitioner shall make the corporation and any pledgee defendants to such proceeding, and shall serve a certified copy of such petition on some chief officer of such corporation, and on any such pledgee, on which copies the probate judge shall state over his signature when said petition will be heard, and said copies shall be so served not less than twenty days before the hearing, and such petitioner shall also publish, for three consecutive weeks, in some newspaper published and of general circulation in the county where the proceed-

Labor organizations; trusts and combinations — Acts, April 14, 1892, April 19, 1898.

ing is pending, and in the county where the petitioner resides the notice containing the substance and prayer of such petition immediately before the day of hearing, and stating when and where the same will be heard.

§ 2. If the probate court, upon the hearing, find that the foregoing provisions have been complied with, and that such described certificate has been lost or destroyed, and that such petitioner at that time was and is the owner thereof, an order shall be made that such corporation issue and deliver a new certificate of stock to such petitioner for the original amount and kind of stock, and in case, at the time of such loss or destruction of such original certificate, the certificate was pledged to any one, and the pledgee yet has a claim against the same, then such order shall direct that such new certificate shall be delivered to such pledgee on such terms as the court may direct, and the corporation shall comply with said orders, and shall in nowise be prejudiced by complying with said orders, or by paying dividends on such new certificate, so long as it is not made known to it that such original certificate is in existence and owned by some person other than said petitioner; and all rights and liabilities attaching to said original certificate shall attach to said re-issued certificate, while in force, but upon the production of the original certificate to such corporation by the owner or pledgee, such re-issued certificate shall be canceled and surrendered, and be void, and executors and administrators, on behalf of estates of deceased owners of any such lost or destroyed certificates of stock, shall be entitled to proceed under this act and have all the rights and benefits thereof.

§ 3. This act shall take effect on its passage.

(Passed April 23, 1891.)

See § 3254.

Act 3.

AN ACT to protect employes and guarantee their right to belong to labor organizations.

Section 1. Be it enacted by the general assembly of the State of Ohio, That it shall be unlawful for any individual, or member of any firm, or agent, officer or employe of any company or corporation to prevent employes from forming, joining and belonging to any lawful labor organization, and any such individual, member, agent, officer or employe that coerces or attempts to coerce employes, by discharging or threatening to discharge from their employ or the employ of any firm, company or corporation, because of their connection with such lawful labor organization, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dol-

lars or imprisoned for not more than six months, or both, in the discretion of the court.

§ 2. This act shall take effect and be in force from and after its passage.

(Passed April 14, 1892.)

General provisions as to factories, employes, etc. §§ 8754 et seq.

Act 4.

AN ACT to define trust and to provide for criminal penalties and civil damages, and punishment of corporation, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in the State.

Section 1. Be it enacted by the general assembly of the State of Ohio, That a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.

2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce, intended for sale, barter, use or consumption in this State.

5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation, settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any man-

ner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the State where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney-general in quo warranto, he may also begin any such suit in the supreme court of the State, or the circuit court of Franklin county, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the State.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of State shall be authorized to revoke the certificate of any such corporation or association heretofore authorized by him to do business in this State.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than five thousand (\$5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination. And that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall

be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation, or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty (\$50) dollars, which may be recovered in the name of the State, in any county where the offense is committed, or where either of the offenders reside; and it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of same. When the action is prosecuted by the attorney-general against a corporation or association of persons he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

§ 10. It shall not be unlawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

Trusts and combinations — Act, April 19, 1898.

§ 11. In addition to the criminal and civil penalties here in provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suits. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends

of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons," whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the State of Ohio, or any other State, or any foreign country.

§ 13. This act shall take effect and be in force from and after the first day of July, 1898.

(Passed April 19, 1898.)

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SPECIAL ACTS ENACTED SUBSEQUENTLY TO 1897.

OREGON.

CONSTITUTION OF OREGON—1857.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Bill of Rights.

- Sec. 18. Private property not to be taken without compensation.
21. No law impairing obligation of contracts shall be passed.

ARTICLE XI.

Corporations and Internal Improvements.

- Sec. 1. Prohibition of banks.
2. Corporations not to be created except under general laws.
3. Personal liability of stockholders.
4. Compensation for property taken by corporations.
6. State not to be a stockholder.
7. State not to loan its credit.
8. Nor assume the debt of any corporation.
9. Municipal corporations not to become stockholders in, or loan credit to, any private corporation.

ARTICLE I.

Bill of Rights.

§ 18. Private property shall not be taken for public use, * * * without just compensation; nor except in case of the State, without such compensation first assessed and tendered.

See art. XI, § 4, and note.

[Property of a corporation, held by it and necessary to its business, is not liable to condemnation; but it has no exclusive right to property not necessary to its object and business. *R. R. Co. v. Bally*, 3 Ore. 164.]

Private property cannot be taken for private use. *Witham v. Osburn*, 4 Ore. 318.

Whether a use is public is solely a question for the courts, regardless of the charter. *Apex Trans. Co. v. Garbade*, 52 Pac. Rep. 573.]

§ 21. No ex post facto law, or law impairing the obligations of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; Provided, That laws locating the capital of the State, locating county seats, and submitting town and corporate acts, and other local and spec-

ial laws, may take effect or not, upon a vote of the electors interested.

See art. II, § 2.

[A corporation operating under a State franchise is subject to reasonable legislative regulations. *Courts. v. Trans. Co.*, 6 Ore. 219.]

ARTICLE XI.

Corporations and Internal Improvements.

Section 1. The legislative assembly shall not have the power to establish or incorporate any bank, or banking company, or moneyed institution whatever; nor shall any bank, company, or institution exist in the State with the privilege of making, issuing, or putting into circulation any bill, check, certificate, promissory note, or other paper, or the paper of any bank, company, or person, to circulate as money.

[Constitution does not prohibit establishment of banks not issuing bills and notes to circulate as money. *State v. H. S. & L. A.*, 8 Ore. 396.]

§ 2. Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights.

See art. I, § 21. Special corporation may incorporate. § 3234.

§ 3. The stockholders of all corporations and joint-stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid, and no more.

Liability of directors. § 3231.

[Property of corporation, not dividends, in hands of a stockholder, is subject to execution on judgment against the corporation. *Hughes v. Ry. Co.*, 11 Ore. 158; s. c., 2 Pac. Rep. 94.]

Stockholder's liability is in equity, where all creditors and stockholders may be made parties. *Bush v. Cartwright*, 7 Ore. 329; *Hodges v. Mining Co.*, 9 Id. 200.

Corporations and internal improvements — Const., Art. xi, §§ 4, 6-9.

And it extends only to the unpaid portion of his subscription. Id.

Liability of stockholders is several, and where it appears that some are insolvent, the solvent stockholders must pay the amount of liability of the insolvent. Id.

Purchaser is liable for unpaid balance due on stock purchased, and duly demanded by directors. *Bush v. Cartwright*, supra.

Assignor of stock is liable when, after due demand, purchaser fails to pay such balance. Id.

Creditor has no remedy against stockholder until his remedy against the corporation is exhausted. Id.

Liability extends only to those who are or have been holders of the legal title to unpaid stock. *Branson v. Ry. Co.*, 10 Ore. 278; s. c., 11 id. 161; s. c., 2 Pac. Rep. 86.

Agent purchasing stock and taking legal title thereto in his own name, for benefit of his principal, must be indemnified by the latter for liabilities thereon. Id.

In suit by creditors to hold stockholders individually liable, not necessary to make all creditors or all stockholders parties. If defendant stockholder wants others made defendants he must bring them in at his own expense, by answer or otherwise. *Brundage v. Mon. G. & S. M. Co.*, 12 Ore. 322 s. c., 7 Pac. Rep. 314. But in suit to wind up an insolvent corporation, all creditors and stockholders shall be made parties. Id.

Equity will follow corporate assets fraudulently diverted and applied for the payment of corporate creditors. *Craig v. California Vineyard Co.*, 46 Pac. Rep. 421.]

§ 4. No person's property shall be taken by any corporation, under authority of law, without compensation being first made or secured in such manner as may be prescribed by law.

See art. I, § 18. Foreign corporation, right of eminent domain. § 3293.

[The legislature cannot in any way authorize a private corporation to appropriate an individual's property without just compensation first assessed and tendered. *O. R. Co. v. Hill*, 9 Ore. 377.

As to measure of compensation, see *Williamette, etc., Co. v. Kelly*, 3 Ore. 99; *O. C. R. Co. v. Wait*, id. 428.]

§ 6. The State shall not subscribe to or be interested in the stock of any company, association, or corporation.

§ 7. The legislative assembly shall not loan the credit of the State, nor in any manner create any debts or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war, or to repel invasion or suppress insurrection; and every contract of indebtedness entered into or assumed by or on behalf of the State, when all its liabilities and debts amount to said sum, shall be void and of no effect.

§ 8. The State shall never assume the debt of any * * * corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

§ 9. No county, city, town, or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint-stock company, corporation, or association whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.

THE CODES AND GENERAL LAWS OF OREGON—1887.

Code of Civil Procedure.

- Ch. 1. Of the forms of pleadings in civil actions.
 4. Of actions at law in particular cases.
 6. Of miscellaneous matters.
 14. Of ministerial officers.

CHAPTER I.

Of the Forms of Pleadings in Civil Actions.

- Tit. V. Of the manner of their commencement.
 XV. Of attachment.

TITLE V. OF THE MANNER OF THEIR

COMMENCEMENT.

- Sec. 55. Summons, how served, and upon whom.
 56. When order for publication of summons may be made.

§ 55. The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent or attorney, or by the county clerk, as follows:—

1. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or in case none of the officers of the corporation above named shall reside or have an office in the county when the cause of action arose, then to any clerk or agent of such corporation who may reside or be found in the county, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent:

* * * * *

See Act of 1893, at p. 21. Jurisdiction of court.
 § 516. Service on foreign corporation. §§ 3277, 3280.

[Service of summons on agent is substituted service, and must show the facts which conferred jurisdiction. *Caro v. R. R. Co.*, 10 Ore. 510.

The mode provided by statute for commencing an action against corporations must be pursued in order to confer jurisdiction upon the court. *Holgate v. R. R. Co.*, 16 Ore. 123; s. c., 17 Pac. Rep. 859.

Section 44 of Civil Code, which provides that the action shall be commenced and tried "in the county in which the defendants, or either of them, reside, or may be found at the commencement of the action," applies to corporations as well as to natural persons, except so far as the former are affected by above provisions. *Id.*

The residence of a corporation is deemed to be in the county where it has its principal office. *Id.*

And a corporation organized under the laws of this State must be sued in that county where cause of action arose. *Id.*

Service of summons of a corporation, by delivery of copy to its secretary at its principal place of business in the county, held sufficient, though he did not reside or have an office therein. *Weaver v. Southern Oregon Co.*, 48 Pac. Rep. 171.

Under above section, service made on the president of a corporation was held good, although the return did not show that he resided or had an office in the county in which the cause of action arose. *Farrell v. Oregon Gold Min. Co.*, 59 Pac. Rep. 186.]

§ 56. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant after due diligence cannot be found within the State, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or justice of the peace in an action in a justice's court; and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this State—the court or judge thereof, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of a summons in either of the following cases:—

1. When the defendant is a foreign corporation, and has property within the State, or the cause of action arose therein;

* * * * *

The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint.

Attorney of foreign corporation, service of process on. § 3277. See Act of 1893, at p. 21.

TITLE XV. OF ATTACHMENT.

Sec. 148. Stock in corporations liable to attachment.

§ 148. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in this State of such defendant, not exempt from execution, shall be liable to be attached. * * *

Stock liable to execution and sale. § 3229.

CHAPTER IV.

Of Actions at Law in Particular Cases.

TITLE V. OF ACTIONS TO VACATE CHARTERS, AND TO DETERMINE THE RIGHT TO AN OFFICE OR FRANCHISE.

- Sec. 354. Seire facias and quo warranto abolished.
 355. Action against corporation to be commenced on direction of governor.
 856. Action to annul existence of corporation.

Sec. 357. Action for usurpation of franchise or office in a corporation.
 359. Who to prosecute actions; pleadings.
 360. Duty of prosecuting attorney.
 361. Relator's right may be pleaded and determined.
 362. Judgment in favor of relator.
 363. Relator may have action for damages.
 364. Actions against several claiming office or franchise.
 365. Judgment against usurper.
 366. Judgment against corporation.
 367. Copy of judgment-roll to be filed.
 368. How judgment enforced.

§ 354. The writ of *seire facias*, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by action at law in the mode prescribed in this title.

See § 3221, subd. 1, and cross-references.

[It is the form of the remedy only that is done away with by this section. *State v. Road Co.*, 10 Ore. 199.]

When district attorney commences proceedings under following sections, he has as much sole control over it as attorney-general would have in a like case at common law. A private relator has no control of the proceedings, and his name may be stricken out as surplusage. *Id.*]

§ 355. An action at law may be maintained in the name of the State, whenever the governor thereof shall so direct, against a corporation, either public or private, for the purpose of avoiding the act of incorporation, or the act renewing or modifying its corporate existence, on the ground that such act or either of them was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of such corporation, when the same has been formed under any general law of this State therefor, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

§ 356. An action at law may be maintained in the name of the State against a corporation, other than a public one, on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall,—

1. Offend against any of the provisions of the acts, or either of them, creating, renewing, or modifying such corporation, or the provisions of any general law under which it became incorporated; or,

2. Violate the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers; or,

3. Whenever it has forfeited its privileges or franchises, by failure to exercise its powers; or,

4. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Whenever it exercises a franchise or privilege not conferred upon it by law.

See § 359. Non-user of corporate power. § 3232. Stockholders may dissolve corporation by vote. § 3235.

[Appeal does not lie from refusal of circuit court to grant leave to vacate charter. *State v. R. R. Co.*, 2 Ore. 255.]

The State may waive the forfeiture of the charter, and its power to do so, acting through the district attorney, cannot be controlled by the court. *Id.* 202.]

§ 357. An action at law may be maintained in the name of the State, upon the information of the prosecuting attorney, or upon the relation of a private party against the person offending, in the following cases:—

1. When any person shall usurp, intrude into, or unlawfully hold, or exercise any public office, civil or military, or any franchise within this State, or any office in a corporation either public or private, created or formed by or under the authority of this State; or,

3. When any association or number of persons act within this State, as a corporation, without being duly incorporated.

[Where a corporation usurps franchises, the remedy is by action in the name of the State. *Kelly v. Trans. Co.*, 3 Ore. 189.]

§ 359. The actions provided for in this title shall be commenced and prosecuted by the prosecuting attorney of the district where the same are triable. When the action is upon the relation of a private party, as allowed in section 357, the pleadings on behalf of the State shall be verified by such relator as if he were the plaintiff in the action, or otherwise as provided in section 80; in all other cases such pleadings shall be verified by the prosecuting attorney in like manner, or otherwise as provided in such section. When an action can only be commenced by leave as provided in section 356, such leave shall be granted when it appears by affidavit that the acts or omissions in such section specified have been done or suffered by such corporation. When an action is commenced on the information of a private person, as provided in section 357, having an interest in the question, such party, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a co-plaintiff with the State.

§ 360. When directed by the governor, as prescribed in section 355, it shall be the duty of the prosecuting attorney to commence the

Actions against corporations, etc.; costs — Code Civ. Pro., §§ 361-368, 516, 566.

action therein provided for accordingly. In all other actions provided for in this title it shall be the duty of the proper prosecuting attorney to commence such action, upon leave given where leave is required, in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the State to indemnify it against the costs and expenses that may be incurred thereby.

§ 361. Whenever an action is brought against a person for any of the causes specified in subdivision 1 of section 357, the prosecuting attorney, in addition to the statement of the cause of action, may also separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his right thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person, so alleged to be entitled, or only upon the right of the defendant, as justice may require.

§ 362. If judgment be given upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to the possession and enjoyment of such franchise, or to take upon himself the execution of such office, after qualifying himself therefor as required by law, and to demand and receive the possession of all the books, papers, and property of whatever nature belonging thereto.

§ 363. If judgment be given upon the right and in favor of the person so alleged to be entitled, he may afterwards maintain an action to recover the damages which he may have sustained by reason of the premises. In such action the defendant may be arrested and held to bail in the same manner and with like effect as in other actions at law where the defendant is subject to arrest.

§ 364. Several persons may be joined as defendants in an action for the causes specified in subdivision 1 of section 357, and in such action their respective rights to such office or franchise may be determined.

§ 365. When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in subdivision 1 of section 357, is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also in its discretion impose a fine upon the defendant not exceeding two thousand dollars.

§ 366. If it be determined that a corporation, against which an action has been commenced pursuant to this title, has forfeited its corporate rights, privileges, and franchises, judgment shall be given that such

corporation be excluded therefrom, and that the corporation be dissolved.

Existence after dissolution. § 3233.

§ 367. If judgment be given against a corporation, the effect of which is that such corporation ceases to exist, * * * it shall be the duty of the prosecuting attorney to cause a copy of the judgment-roll to be filed in the office of the secretary of State.

§ 368. A judgment given in any action provided for in this title, in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or if the defendant be a corporation, the body of any or all of the officers or members of such corporation refusing or neglecting obedience thereto.

CHAPTER VI.

Of Miscellaneous Matters in Actions and Suits.

Tit. V. Costs.

GENERAL PROVISIONS.

Sec. 516. When court has jurisdiction of corporation.

§ 516. No corporation is subject to the jurisdiction of a court of this State, unless it appear in the court, or have been created by or under the laws of this State, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Jurisdiction. See §§ 55, 56, and cross-references. Agent to be appointed. § 3272. Agent of owners of vessel. § 3285. Who is such agent. § 3289.

TITLE V. COSTS.

Sec. 566. Security for costs when plaintiff a foreign corporation.

§ 566. The attorney of a plaintiff who resides out of the State, or is a foreign corporation, against whom costs are adjudged in favor of a defendant, is liable to such defendant therefor; and if he neglect to pay the same, upon the information of such defendant shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action or suit, or at any time thereafter before judgment or decree, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

See § 3221, subd. 1, and cross-references. Security given by corporation. § 3282.

Appearances, etc.—Code Civ. Pro., §§ 1032, 1061; Crim. Code, §§ 1770, 1802, 1803, 1893.

CHAPTER XIV.

Of Persons Specially Invested with Ministerial Powers Relating to the Courts of Justice.

Tit. I. Of attorneys in general.
VII. Of receivers.

TITLE I. OF ATTORNEYS IN GENERAL.

Sec. 1032. Corporation may appear only by attorney.

§ 1032. Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the State or a corporation, either public or private, appears by attorney in all cases; and where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party, except as provided in the last section.

See § 3221, subd. 1, and cross-references. Foreign corporation to appoint attorney. § 3276. Who may be same. § 3277. Attorney of owners of vessels. § 3285.

TITLE VII. OF RECEIVERS.

Sec. 1061. Receiver appointed for dissolved or insolvent corporation.

§ 1061. A receiver may be appointed in any civil action, suit, or proceeding, other than an action for the recovery of specific personal property,—

* * * * *
4. In cases provided in this Code, or by other statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;
* * * * *

See Act of 1893, at p. 21.

Criminal Code.

TITLE II. OF CRIMES AND THEIR PUNISHMENTS.

Ch. 3. Of crimes against property.
8. Of crimes against public policy.
13. General provisions.

CHAPTER III.

Of Crimes Against Property.

Sec. 1770. Larceny by embezzlement by servant.
1802. Officer, agent, or member of corporation falsifying records thereof.
1803. Officer, etc., of corporation publishing false reports concerning business of corporation.

§ 1770. If any officer, agent, clerk, employe, or servant of any * * * incorporation, shall embezzle or fraudulently convert to his own use, or shall take or secrete, with

intent to embezzle or fraudulently convert to his own use, any money, property, or thing of another which may be the subject of larceny, and which shall have come into his possession, or be under his care, by virtue of such employment, such officer, agent, clerk, employe, or servant shall be deemed guilty of larceny, and upon conviction thereof shall be punished accordingly.

§ 1802. If any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive any one, willfully and knowingly destroy, alter, mutilate, or in any manner falsify or concur in the destruction, alteration, mutilation, or falsification of any of the books, papers, writings, or securities belonging to or in the possession of such corporation or company, such person, upon conviction thereof, shall be punished in the manner prescribed in section 1801.*

Correct record of business to be kept. § 3225.
Corporation shall keep stock-book. § 3228.

§ 1803. If any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive any one, willfully and knowingly make, circulate, or publish, or concur in the making, circulating or publishing any written or printed statement or account, concerning or relating to the liabilities, assets, or property of such corporation or company, which statement or account shall be false in any material particular, such person, upon conviction thereof, shall be punished in the manner provided in section 1801.

Liability of directors. § 3231.

CHAPTER VIII.

Of Crimes against Public Policy.

Sec. 1893. Endeavor to prevent person from working, etc.

§ 1893. (As amended February 27, 1891.) If any person shall, by force, threats or intimidation, prevent or endeavor to prevent any person employed by another from continuing or performing his work, or from accepting any new work or employment; or if any person shall circulate any false, written or printed matter, or be concerned in the circulation of any such matter, to induce others not to buy from or sell to or have dealings with any person, for the purpose or with the intent to prevent such person from employing any person, or to force or compel him to employ or discharge from his employment any one, or to alter

*Imprisonment in county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Taxation — Misc. L., §§ 2044, 2729, 2731, 2739, 2742, 2744, 2750, 2988.

his mode of carrying on his business, or to limit or increase the number of his employes or their rate of wages or time of service, such person shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned in the county jail not more than six nor less than one month, or by fine of not less than ten nor more than two hundred dollars.

CHAPTER XIII.

General Provisions in Relation to Crimes.

Sec. 2044. "Person" includes corporations.

§ 2044. The word "person" includes corporations as well as natural persons; and where such word is used to designate the party whose property may be the subject of a crime, it included * * * private corporations, as well as individuals.

Miscellaneous Laws.

- Ch. 17. Assessment of property and the levy and collection of taxes.
 19. Estates in real property.
 32. Private corporations.
 33. Foreign corporations.

CHAPTER XVII.

Of Assessment of Property, and the Levy and Collection of Taxes.

- Tlt. I. Of property subject to assessment and taxation.
 II. Of where and to whom property shall be assessed.

TITLE I. OF PROPERTY SUBJECT TO ASSESSMENT AND TAXATION.

Sec. 2729. Taxes, upon what assessed and levied.
 2731. "Personal property" includes what.

§ 2729. All taxes for the support of the government of this State shall be assessed on property in equal and ratable proportion, and all property, real and personal, within this State, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

Property of corporation, where assessed.
 §§ 2730-2744. When stock not taxed to owner.
 § 2750.

§ 2731. The terms "personal estate" and "personal property" shall be construed to include all * * * stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies liable to taxation on their capital as shall not be invested in real estate.

Stock is personalty. § 3229.

TITLE II. OF WHERE AND TO WHOM PROPERTY SHALL BE ASSESSED.

- Sec. 2739. Real estate of corporations.
 2742. Machinery, etc., employed in manufacturing, to be assessed, where.
 2744. Property of corporations, where assessed.
 2750. When corporate stock not taxed to owner.

§ 2739. The real estate of incorporated companies liable to taxation shall be assessed in the county in which the same shall lie, in the same manner as the real estate of individuals.

§ 2742. All goods, wares, and merchandise kept for sale in this State, all stock employed in any of the mechanic arts, and all capital and machinery employed in any branch of manufacture or other business within this State, owned by a corporation out of this State, or by any person, whether residing in or out of the State, shall be taxable in the county where the same may be, either to the owners thereof or to the person who shall have charge of or be in possession of the same.

§ 2744. The personal property of every private corporation is liable to assessment and taxation, unless otherwise specially provided, and shall be assessed in the name of such corporation, in the county where the principal office or place of business of such corporation is located; but if such corporation is engaged in the business of navigation or railroading, then the steamboats or other water craft of such corporation shall be assessed in the county in this State where the home port or berth of such steamboat or other water craft may be, and the rolling stock of such railway shall be assessed in the county in this State wherein the principal terminus or depot of such railroad may be; Provided, That if either terminal (terminus) or any depot of such road be in the county where such corporation has its principal office or place of business, then such rolling stock shall be assessed in such county. The personal property of a private corporation may be seized and sold for any tax levied upon the property of such corporation, as in the case of a natural person.

§ 2750. The owner or holder of stock in any incorporated company which is taxed on its capital shall not be taxed as an individual for such stock.

CHAPTER XIX.

Estates in Real Property.

TITLE III. GENERAL PROVISIONS.

Sec. 2988. Foreign corporations may hold, convey, and devise lands.

§ 2988. * * * Any corporation incorporated under the laws of any other State in the United States, or of any foreign country, not prohibited by the Constitution or laws

of this State from carrying on business in this State, may acquire, hold, use, and dispose of, in the corporate name, all real estate necessary or convenient to carry into effect the object of the incorporation and the transaction of its business, and also any interest in real estate by mortgage or otherwise, as security for moneys due to or loans made by such corporation.

Power to hold real estate. § 3221, subd. 4.

CHAPTER XXXII.

Private Corporations.

TITLE I. GENERAL PROVISIONS IN RELATION TO THE FORMATION OF PRIVATE CORPORATIONS.

- Sec. 3217. Three or more persons may form a corporation for any lawful business.
3218. Articles of incorporation, how made and filed.
3219. Articles to be evidence of corporation's existence.
3220. Articles of incorporation, what to specify.
3221. Body corporate, when to date from; powers of.
3222. Corporations to receive stock and call meeting for election of directors; railway corporations may organize when one-half of stock subscribed.
3223. Corporators to be inspectors of election; who may vote.
3224. Qualification of directors; corporations may allow a minority of directors to reside out of the State; shall take oath.
3225. Powers of directors; appointment of president and secretary.
3226. Notice of first meeting of stockholders; meeting may be held at any time and without notice by consent and presence of stockholders; notice of subsequent meetings.
3227. Directors elected annually; a majority may act.
3228. Corporation to keep stock-book, subject to inspection by persons interested.
3229. Stock to be deemed personal property; in case of sale, corporation to make transfer.
3230. Sale of stock, effect of.
3231. Wrong-doing of directors, liability for; directors dissenting, not liable.
3232. Non-user of corporate power, effect of.
3233. Corporations continue to exist for certain purposes after dissolution.
3234. Special corporations may incorporate under this act; effect thereof.
3235. Majority of stockholders may vote to increase or diminish stock, dissolve corporation, etc.; limit of capital stock except as to railways.
3236. Corporations for navigation may build roads across portages; prohibitions on taking stock in corporation to construct road.
3237. Place of business, majority vote of stockholders may change.
3238. Supplementary articles, what may be filed for; notice thereof to be published.

§ 3217. Whenever three or more persons shall desire to incorporate themselves, for the purpose of engaging in any lawful enterprise, business, pursuit, or occupation,

they may do so in the manner provided in this act.

Prohibition of banks. Const., art. XI, § 1. Corporation not to be formed by special laws. Const., art. XI, § 2. Powers of corporation. § 3221. Special corporation may incorporate. § 3234.

[Power to organize as a corporation for any lawful purpose, etc., includes the power to organize for purpose of buying, selling, and leasing a railroad. *Ry. Co. v. R. & N. Co.*, 10 Saw. 464. A corporation must have full and complete organization and existence, in accordance with the laws under which it owes its origin, before it can assume its franchises or enter into any kind of contract or business. *McVicker v. Cone*, 21 Ore. 333; s. c., 28 Pac. Rep. 76.

Where three or more persons execute and file articles of incorporation, and do nothing further toward effecting an organization or carrying on the proposed business, they do not become liable as partners. *Rutherford v. Hill*, 22 Ore. 218; s. c., 29 Pac. Rep. 546.

A person may be a corporator who is not a stockholder. *Coyote v. Rubie*, 8 Ore. 284.]

§ 3218. (As amended February 20, 1891.) Such persons shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of a deed, and shall file one of such articles in the office of the secretary of State, and cause the same to be recorded by him in a book to be kept in his office for that purpose, and shall file another with the clerk of the county where the enterprise, business, pursuit or occupation is proposed to be carried on or the principal office or place of business is proposed to be located, and cause the same to be recorded by him in a book to be kept in his office for that purpose, and shall retain the third in the possession of the corporation.

Supplementary articles of incorporation. § 3238.

§ 3219. The articles of incorporation, or a certified copy of the one filed with the secretary of State or the county clerk, is evidence of the existence of such corporation.

§ 3220. The articles of incorporation shall specify,—

1. The name assumed by the corporation and by which it shall be known, and the duration of the corporation, if limited;

2. The enterprise, business, pursuit, or occupation in which the corporation proposes to engage;

3. The place where the corporation proposes to have its principal office or place of business;

4. The amount of the capital stock of the corporation;

5. The amount of each share of such capital stock;

6. If the corporation is formed for the purpose of navigating any stream or other water, or making or constructing any rail-

road, macadamized road, plank-road, clay road, canal, or bridge, the termini of such navigation, road, canal, or the site of such bridge.

§ 3221. Upon making and filing the articles of incorporation, as herein provided, the persons subscribing the same are incorporators, and authorized to carry into effect the objects specified in the articles, in the manner provided in this chapter; and they and their successors, associates, and assigns, by the name assumed in said articles, shall thereafter be deemed a body corporate, with power,—

1. To sue and be sued;

Summons, how served. § 55. Same by publication. § 56. Attachment. § 148. Actions in name of State. §§ 354-368. Jurisdiction of court. § 516. Foreign corporation, security for costs. § 566. Corporation to appear by attorney only. § 1032. Appointment of receiver. § 1061. Crimes. §§ 1770-1803. "Person" includes corporation. § 2044. Evidence of corporate existence. § 3219. Suits between foreign corporation and citizen of this State. § 3293.

[Corporator may sue his corporation. *Miller v. City, etc., Co.*, 3 Ore. 24.

President is the proper officer to confess judgment against the corporation if duly authorized. *Id.*; *Miller v. Bank*, 2 Ore. 291.

A construction company having control of and operating a railroad for the owners, the latter are liable for an injury occasioning death, though the use of the road was without their consent. *Lakin v. R. R. Co.*, 13 Ore. 436; s. c., 11 Pac. Rep. 68.

The corporation is the proper party to sue for redress of injuries to it, but stockholders may do so upon showing refusal of corporate officers. *Newby v. R. R. Co.*, 1 Saw. 63.

A private corporation being the creature of statute may be sued in such manner as the legislature may provide. *Holgate v. R. R. Co.*, 16 Ore. 423; s. c., 17 Pac. Rep. 859.

The creation of a body corporate for any purpose impliedly confers upon it the incidental powers belonging to a corporation, which includes power to sue and be sued so far as necessary to maintain its corporate rights and enforce its corporate duties. *Grant v. Lake Co.*, 17 Ore. 453; s. c., 21 Pac. Rep. 447.

An officer of a defendant corporation, whose acts constituted the identical wrong committed by the corporation, is stopped, as plaintiff, to set up such wrong. *Budd v. St. Ry. Co.*, 15 Ore. 404; s. c., 15 Pac. Rep. 654.

A water company may be compelled by mandamus to furnish water on reasonable terms to any inhabitant of a city. *Haugen v. L. & W. Co.*, 21 Ore. 411; s. c., 28 Pac. Rep. 244.]

2. To contract and be contracted with;

[Unauthorized contract may be subsequently ratified, expressly or impliedly, by the corporation. *Branson v. Ry. Co.*, 10 Ore. 278.

A corporation must have full and complete organization and existence, in accordance with the laws under which it owes its origin, before it can enter into any kind of contract or business. *McVicker v. Cone*, 21 Ore. 353; s. c., 28 Pac. Rep. 76.

Corporation cannot rescind an ultra vires contract, when it has acquiesced therein for a long period and has received commensurate benefits and been relieved from burdensome obligations. *Assn. v. Hegele*, 24 Ore. 16; s. c., 32 Pac. Rep. 679.

Corporations are entitled to benefit of rule that

honesty rather than wrong is to be imputed to the conduct of men. *Fink v. Road Co.*, 5 Ore. 301.
In absence of proof, courts cannot disregard as illegal the dealings of a corporation which on their face, or according to their apparent import, are within its charter or articles. *Id.*]

3. To have and use a corporate seal, and the same to alter at pleasure;

[Corporate deed may be executed with a scroll seal. *Mills Co. v. Montelth*, 2 Ore. 277.

The purpose of a corporate seal is to give full faith and credit to the writing to which it is appended. *Guthrie v. Imbrie*, 12 Ore. 182; s. c., 6 Pac. Rep. 664.

Any seal convenient may be adopted. *Eureka Co. v. Baily*, 11 Wall. 491.

Agent may be appointed by resolution without corporate seal. *Osborn v. Bank*, 9 Wheat. 738.

A mortgage executed on behalf of a corporation by a duly authorized agent is not void because sealed with a scroll instead of the corporate seal. *Thayer v. Nehalem Mill Co.*, 51 Pac. Rep. 202.]

4. To purchase, possess, and dispose of such real and personal property as may be necessary and convenient to carry into effect the objects of the incorporation, and to take, hold, and possess, and dispose of all real and personal property donated to such corporation by the United States, or by any State, territory, county, city, or other municipal corporation or by any person, firm, association, or private corporation, for the purpose of aiding in the objects of such corporation;

Foreign corporation may hold real estate. § 2988.

[Power to purchase land was incident to corporations at common law. *Kelley v. Tran. Co.*, 3 Ore. 189.

Corporators may receive and hold property for use of the corporation to be formed. *Id.*

Corporation must execute its deeds with corporate seal, which may, however, be a scroll seal. *Mills Co. v. Montelth*, 2 Ore. 277.

Directors cannot in their own names execute deed for and in behalf of the corporation; it must be the corporation's deed, executed by it. *Id.*

Deed sealed with the corporate seal and subscribed by president and secretary, declaring that they subscribed it, for the corporation, passes title. *Moore v. Willamette*, 7 Ore. 359.

A corporation has capacity to execute a deed as attorney in fact for another. *Killingsworth v. Trust Co.*, 18 Ore. 331; s. c., 23 Pac. Rep. 66.

It is essential to the proper execution of a deed or mortgage by a corporation that it be done in the name of, and in behalf of the corporation, and under its corporate seal. *Brown v. Supply Co.*, 23 Ore. 541; s. c., 32 Pac. Rep. 548.

Mortgage reciting that a certain corporation has conveyed, etc., executed by persons signing themselves respectively "president" and "secretary," sealed with their seals, and acknowledged by them personally but not showing them to be corporation officers, or that the instrument is executed by corporate authority, is not the contract of the corporation. *Id.*

Fact that certain persons are corporate officers does not authorize them to mortgage corporate property, unless authorized by board of directors. *Id.*

Where lands are bought by a corporation not authorized to hold real estate, and by it conveyed to a third person, it is held that a good title will pass. *Kelley v. People T. Co.*, 3 Ore. 189.

The business manager of a corporation at a place distant from its office, and the residence of

its officers and directors, held to have authority to execute a mortgage on its behalf to secure indebtedness contracted in the conduct of its business. *Thayer v. Nehalem Mill Co.*, 51 Pac. Rep. 202.]

5. To appoint such subordinate officers and agents as the business of the corporation may require, and prescribe their duties and compensation;

Agent of foreign corporation. § 3289.

[Corporation cannot avail itself of services of a person and then screen itself from liability on ground that it never passed an ordinance on the subject. *Taylor v. University*, 14 Ore. 485; s. c., 13 Pac. Rep. 329.

Person cannot be the agent of a corporation in making a purchase before the corporation exists. *Kelly v. Ruble*, 11 Ore. 75; s. c., 4 Pac. Rep. 533.

Relation of attorney of the corporation to the corporation requires the utmost good faith. *Powell v. R. R. Co.*, 15 Ore. 333; s. c., 15 Pac. Rep. 663.

Officers of a corporation who do not act as its agent or trustee in executing a purchase by it, or occupy a fiduciary relation toward it, may legally contract with a vendor for a commission on such sale. *Jameson v. Coldwell*, 23 Ore. 144; s. c., 31 Pac. Rep. 279.]

6. To make by-laws not inconsistent with any existing law for the sale of any portion of its stock for delinquent or unpaid assessments due thereon, which sale may be made without judgment or execution; Provided, That no such sale shall be made without thirty days' notice of time and place of sale in some newspaper in circulation in the neighborhood of such company for the transfer of its stock, for the management of its property, and for the general regulations of its affairs;

Sale of stock, effect of. § 3230.

[Corporations in organizing have no authority to make regulations disposing of future profits, except by the articles of incorporation. *Coyote Co. v. Ruble*, 8 Ore. 284.

The owner of stock has an untrammelled right to dispose of it, and any by-law attempting to limit such right is void. *State v. Smith*, 15 Ore. 98; s. c., 14 Pac. Rep. 814; 15 id. 137, 386.

A corporation has no inherent power to forfeit and sell shares held by a delinquent stockholder, as such power can only be exercised when expressly conferred by statute. *Budd v. St. Ry. Co.*, 15 Ore. 413; s. c., 15 Pac. Rep. 659.

By-laws for such a sale, authorized by above section, must "not be inconsistent with any existing law." *Id.*

Such a by-law must be reasonable, and therefore a resolution directed against the stock of a particular stockholder named is not a by-law. *Id.*]

7. In case the object or purpose for which any such corporation is incorporated is in whole or in part to construct, or construct and operate a railroad, to lease any part or all its road to any other company incorporated for the purpose of maintaining and operating a railroad, and to lease or purchase, maintain and operate any part or all of any other railroad constructed by any other company upon such terms and conditions as may be agreed upon between said

companies respectively. Any two or more railroad companies whose lines are connected may perfect any arrangement for their common benefit to assist and promote the object for which they were created; Provided, That nothing in this act shall be construed to authorize the leasing of any railroad line to any company or corporation owning a road which forms a competing or parallel line to its railroad.

Foreign railway corporation, conditions imposed on. § 3293.

[**Powers in general.**—Evidence of powers is now found in the general laws and the articles of incorporation. *R. R. Co. v. Baily*, 3 Ore. 164. Corporations have only such powers as are expressly conferred by statute or incidental to their very existence. *Lakin v. Willamette V. Co.*, 13 Ore. 436; s. c., 11 Pac. Rep. 68; *Boers v. Dalles City*, 16 Ore. 334; s. c., 18 Pac. Rep. 835.

What is meant by power of company "necessary and convenient" to effect its objects. *Kelly v. Trans. Co.*, 3 Ore. 189.

The tendency of modern decisions is to assimilate the powers of private corporations to those of individuals and partnerships. *Pink v. Road Co.*, 5 Ore. 301.

A corporation organized to make and sell lumber cannot hold mechanic's lien for labor performed in construction of building. *D. L. & M. Co. v. W. W. M. Co.*, 3 Ore. 527.

Power to organize as a corporation for any lawful purpose, etc., includes power to organize for purpose of buying, selling and leasing a railroad. *Ry. Co. v. R. & U. Co.*, 10 Saw. 464.

A corporation cannot be a partner. *Hackett v. Ry. Co.*, 12 Ore. 124; s. c., 6 Pac. Rep. 659. But may be a joint owner. *Id.*]

§ 3222. The corporators, or any portion of them, designated by a majority of the whole number, are authorized to open books and receive subscription to the capital stock of the corporation, and as soon as such capital stock has been subscribed, they shall give notice to the subscribers to meet at such time and place as they may designate, for the purpose of electing not less than three directors, as the stockholders present shall determine; Provided, That it shall be lawful in the organization of any corporation to elect a board of directors, as soon as one-half of the capital stock has been subscribed.

Notice of first meeting. § 3226.

[Before organization completed, corporation can receive subscriptions and sue on stock assessments. *R. R. Co. v. Scoggin*, 3 Ore. 161.

Corporations in organizing have no authority to make regulations disposing of future profits, except by the articles of incorporation. *Coyote Co. v. Ruble*, 8 Ore. 284.

Corporators may receive and hold property for use of the corporation to be formed. *Id.*

Subscription to all the stock is unnecessary before assessments may be levied. *Willamette v. Stannus*, 4 Ore. 261.

Subscription to all stock is unnecessary before assessments may be levied. *Id.*

Stockholders present and assenting to adoption of by-law by stockholders, and not adopted by board of directors, levying assessments, is estopped to deny legality of levy. *Id.*

Organizing by the corporation subscribing for the majority of its stock is a nullity. *Holladay*

v. Elliott, 8 Ore. 81. A corporation cannot subscribe for its own stock. Id.

Minority of stock only being subscribed, stockholders cannot organize and elect directors. Id.; Coyote v. Ruble, 8 Ore. 284.

Person may be a corporator who is not a stockholder. Id. Stockholder is liable for assessment only when the records show assessment was made by directors. Id.

Agreement made by stockholder before organization must be adopted by corporation or the directors after their election to become binding. Id.

Subscription to half the stock must be made before corporation can be organized. Id.

To be liable as a stockholder person must have signed or expressly authorized an agent to sign stock-book. Id.

Original stockholders are made liable only by their written subscriptions, and there is no estoppel between them. Id.

Agreement made before organization to subscribe does not authorize directors afterward to put the person's name on the stock-list. Id.

In action by corporation to recover subscriptions conditions of the subscription may be inquired into, and there is no estoppel. Id.

Stockholder purchasing mining property for corporation may be held a trustee, and required to convey to corporation. Id.

Entry by agent of name of principal in a stock-list, without subscribing the principal's name to subscription-list or stock-book by him as agent, does not bind principal as a stockholder. Grangers v. Vinson, 6 Ore. 172.

Where a bare subscription is relied on to show a person a stockholder, the subscription itself should contain enough to show his intention to subscribe for the stock. Id.; Coyote v. Ruble, 8 Ore. 284.

Stockholder making a conditional subscription, to take advantage of failure to comply with the condition should promptly require subscription canceled. Lee v. Embrie, 13 Ore. 510; s. c., 11 Pac. Rep. 270.

He may be held liable as a stockholder, where by his acts he has waived the condition. Id.

Unpaid subscriptions constitute a fund upon which creditors can rely. Id.

Directors may make "calls" upon stock without stating in their proceedings that such calls are for a corporate purpose, or that the business of the corporation required that such subscriptions should be paid. Budd v. St. Ry. Co., 15 Ore. 413; s. c., 15 Pac. Rep. 659.

The power to make calls upon stock is one of "powers" vested in the corporation and to be exercised by a board of directors from and after their first meeting. Id.

All that is necessary is that there should be some act or resolution which shows a clear official intent to render due and payable a part or all the unpaid subscriptions. Id.

The necessity of a call is not open to question by stockholders. Id.

After one-half of the capital stock has been subscribed and a board of directors elected, assessments may be legally made upon stock so subscribed. R. R. Co. v. Hill, 20 Ore. 177; s. c., 25 Pac. Rep. 379.

In the case of an ordinary subscription to capital stock, a tender of certificate for the shares so subscribed is not a condition precedent to the right to maintain action to recover assessments legally made on such shares. Id.

Conditional subscriptions to capital stock, made before the organization is effected, are not to be considered as absolute and unqualified, or the conditions thereto attached as void. R. R. Co. v. Spillman, 23 Ore. 587; s. c., 32 Pac. Rep. 688. Such conditional subscriptions cannot be counted in determining whether the requisite amount of capital stock has been subscribed to authorize the organization under above section. Id.

It is an implied part of the contract of an original subscriber to stock of a corporation afterward to be organized, that he is not liable to pay assessments before one-half of the stock is subscribed. Id. And no action may be maintained on a subscription, made prior to organization, where, at time of attempting organization, one-half the stock had not been subscribed, unless

there has been some act on part of subscriber constituting a waiver of such requirement. Id.

Evidence held to show that half of the subscribers to stock participated in the organization as required by above section. Nickum v. Burkhardt, 47 Pac. Rep. 788.

One participating in the organization under the articles is estopped to claim that the purpose of the company differed from those stated in the original agreements. Id.

The fact that, in organizing a corporation, no formal stock-books were opened or stock subscribed, could not be taken advantage of by an incorporator. Jones v. Hale, 52 Pac. Rep. 111.]

§ 3223. The corporators present at such meeting shall be inspectors of the election, and certify who are elected directors, and appoint the time and place for their first meeting; and each stockholder who shall attend in person or by proxy, appointed by writing, and subscribed by such stockholder, shall be entitled to one vote for each share of capital stock subscribed by him; but after such first election of the directors, no person shall vote on any share upon which any installment, or portion thereof, is then due and unpaid.

Notice of first meeting. § 3226. President to act as inspector of election. § 3227.

§ 3224. (As amended February 20, 1893.) No person is eligible to the office of director unless he is a stockholder in the corporation and a resident of the State; and a director ceasing to be such stockholder or resident, ceases to be a director; Provided, That corporations incorporated for the purpose of constructing railroads or military wagon roads, canals, or flumes, or carrying on mining enterprises, within or without the State, or publishing newspapers, or conducting institutions of learning, or for the purpose of conducting any manufacturing business, may permit a minority of the board of directors to reside out of the State. Before entering on the discharge of their duties, the directors shall each take and subscribe an oath to faithfully and honestly discharge such duties.

[A court will not inquire into the length, extent or magnitude of canals or roads in order to ascertain whether a non-resident is qualified to be a director under above section. State v. Smith, 15 Ore. 98; s. c., 11 Pac. Rep. 814; 15 id. 137, 386.

A bona fide owner of shares is qualified to be a director, although the transfer has not been registered on company books. Id.]

§ 3225. The directors when elected and qualified at the first meeting thereafter, shall elect one of their number president, who shall preside at their meetings, and perform such other special duties as the directors may authorize, and at the same time shall appoint a secretary, whose duty it shall be to keep a fair and correct record of all the official business of the corporation. From the first meeting of the directors, the powers vested in the corporation are exercised by them, or by their officers or agents

Election of directors; quorum of directors; stock-book — Misc. L., §§ 3226-3228.

under their direction, except as otherwise specially provided in this chapter.

Falsifying records. § 1802. Powers of corporation. § 3221. See § 3227, and note. Wrongdoing of directors. § 3231.

[Proceedings of a corporation must be shown by its records. *Coyote v. Ruble*, 8 Ore. 284.]

President of railroad company cannot mortgage locomotives under corporate seal without express authority. *Luse v. Ry. Co.*, 6 Ore. 125.

Persons signing note with his name, and adding "Pres." or "Sec.," is personally bound. *Gathrie v. Imbrie*, 12 Ore. 182; s. c., 6 Pac. Rep. 664. But officers signing their names and affixing corporate seal with the name of corporation thereon binds the corporation. *Id.*

Fraud of directors not reviewed in equity unless there be cause for removal and to wind up the corporation. *Hedges v. Paquet*, 3 Ore. 77.

If not prevented by the by-laws directors may fix their own compensation, and may pass upon other questions in which the individual director has an interest. *Id.* But such acts are not conclusive, and are voidable, not void, and one who seeks to set them aside must show injury. *Id.*

Power of directors to contract with each other. *Schetter v. Southern Ore. Co.*, 19 Ore. 192; s. c., 24 Pac. Rep. 25.

A director acts in a trust capacity toward all stockholders in respect to all corporate property, and cannot so deal with such property as to make profit for himself. *Id.*

Director of a private corporation is not individually bound by the vote of a majority of board when he is one party and the corporation another. *Miller v. Mfg. Co.*, 3 Ore. 24; *Hedges v. Strong*, *Id.* 18.

Directors are trustees for the corporation. *Corbett v. Woodward*, 5 Saw. 463.

A mortgage given in good faith and openly to a director of the mortgagor corporation to secure a debt is valid. *Jones v. Hale*, 52 Pac. Rep. 311.]

§ 3226. The notice of the time and place of the first meeting of the stockholders for the election of directors shall be given by publication of the same for thirty days before such meeting in some newspaper published at least once a week in the county where the meeting is to be held, or in some newspaper published in like manner, and in general circulation therein: Provided, That nothing herein contained shall be construed to prevent such stockholders from holding such meeting for the election of directors before the expiration of thirty days after such stock is subscribed, and without the publication of the notice above referred to; Provided further, That all such stockholders shall be present at such meeting, or consent thereto in writing, which consent shall be filed with the secretary of such company. All notices of subsequent meetings of stockholders or directors shall be given for such time and in such manner as the directors may prescribe.

Corporators to call meeting. § 3222.

[Proceedings of a corporation must be shown by its records. *Coyote v. Ruble*, 8 Ore. 284.]

A meeting of stockholders, and the acts of such meeting, are invalid unless called upon the proper notice to all. *In re Mill Co.*, 3 Saw. 88.]

§ 3227. There shall be an annual election

of directors, and at each election after the first the president of the corporation shall act as inspector of election, and certify who are elected directors. The directors chosen shall hold their offices for one year thereafter, and until their successors are elected and qualified. The powers vested in the directors may be exercised by a majority of them, and any less number may constitute a quorum at all regular or stated meetings authorized by the by-laws of the corporation, in all cases when either the directors or incorporators shall have filed with the secretary of State and county clerk a written statement designating such less number sufficient to form a quorum. And insurance companies formed under this law may designate in their articles of incorporation what amount of per centum of the capital stock shall be required to be paid in before commencing business, and the stockholders shall be liable for their residue of the stock held by them respectively, when the business or liability of the corporation shall require it.

See §§ 3225, and note. Corporators to be inspectors of election, when. § 3223.

[A pledgee of stock given as security for payment of a note has no right to cause transfer of stock to be made on books before the note matures, though there is an agreement to the contrary, and an attempted transfer of that note would not divest the purchaser of his right to vote the stock. *State v. Smith*, 15 Ore. 98; s. c., 14 Pac. Rep. 814; 15 *Id.* 137, 386.]

A bona fide owner of shares is qualified to be a director, although the transfer has not been registered on company books. *Id.*

Where a number of directors, in the absence of others, proceeded immediately after their election to organize and elect a president, held, that the proceedings were irregular and void, and were not remedied by a subsequent ratification. *Id.*

Directors owning all the stock, at a meeting where all were present, three transferred all their stock to the remaining two; held, purely individual transaction, notwithstanding all were officers. *Mays v. Foster*, 13 Ore. 214; s. c., 10 Pac. Rep. 17.

In absence of proof to contrary, a transfer of stock to an individual cannot be held to be a transfer to the company. *Id.* All directors must have notice of the time and place of a meeting, either actual or constructive, and any action had at a meeting called without such notice is void. *Doernbecker v. Lumb. Co.*, 21 Ore. 543; s. c., 28 Pac. Rep. 899.

A director is not entitled to compensation for services as such, unless it is provided for by a resolution or by-law adopted prior to time of his performance of such services. *Wood v. Mfg. Co.*, 23 Ore. 20; s. c., 23 Pac. Rep. 848.]

§ 3228. Every corporation organized under this charter shall keep a stock-book, in such manner as to show intelligibly the original stockholders, their respective shares, the amount paid, and the amount due thereon, if any, and all transfers thereof, which stock-book, or a certified copy thereof, as to the items in this section specified, as well as all other books of the corporation necessary for carrying on its business, shall be subject to the inspection, at all reasonable hours, of any

Levy on stock; dividends; continuance after dissolution, etc.—Misc. L., §§ 3229-3234.

person interested therein and applying therefor.

Falsifying records. § 1802. Secretary to keep records. § 3225.

[Proceedings of a corporation must be shown by its records. *Coyote v. Ruble*, 8 Ore. 284.]

Before a party can give secondary evidence on contents of records of a private corporation, he must show that he cannot produce the original in a reasonable time and with reasonable diligence. *Bowrick v. Miller*, 21 Ore. 25; s. c., 26 Pac. Rep. 861.]

§ 3229. The stocks in all private corporations organized under this chapter are to be deemed personal property, and subject to attachment, execution, levy, and sale as such; and the corporation, in case of such sale, is required to make the necessary transfer to the purchaser upon the stock-book.

Stock personal property for taxation. § 2731. And liable to attachment. § 148. Sale of stock without judgment. § 3221, subd. 6.

[Mandamus does not generally lie to compel transfer of stock on corporation books. *Durham v. Monumental Co.*, 9 Ore. 41; *Slemmons v. Thompson*, 23 id. 215; s. c., 31 Pac. Rep. 514.]

Remedy for refusal to transfer stock on stock-books is by action at law for damages. Id.

Trover lies for conversion of shares of corporate stock. *Budd v. Ry. Co.*, 12 Ore. 271; s. c., 7 Pac. Rep. 99.]

§ 3230. All sales of stock, whether voluntary or otherwise, transfer to the purchaser all rights of the original holder or person for whom the same is purchased, and subject such purchaser to the payment of any unpaid balance due, or to become due, on such stock; but if the sale be voluntary, the seller is still liable to existing creditors for the amount of such balance, unless the same be duly paid by such purchaser.

See note to Const., art. XI, § 3.

[Under above section, all sales of stock subject purchaser to unpaid balance due on said stock. A debtor of the company conveyed his stock to a trustee, to sell same to any person who would pay his indebtedness to the corporation therefor. Held, that this was no sale, and trustee was not such purchaser as would incur the liability under said statute. *Powell v. R. R. Co.*, 15 Ore. 393; s. c., 15 Pac. Rep. 663.]

The owner of stock has untrammelled right to dispose of it, and any by-law attempting to limit such right is void. *State v. Smith*, 15 Ore. 98; s. c., 14 Pac. Rep. 814; 15 id. 137, 386.

Assignee of unpaid corporate stock becomes liable for the unpaid balance thereon. *Bush v. Cartwright*, 7 Ore. 329. But this does not absolutely release the assignor. Id.]

§ 3231. If the directors of a corporation declare and pay dividends when the corporation is insolvent, or which renders it insolvent, or diminishes the amount of its capital stock, such directors shall be jointly and severally liable for the debts of the corporation then existing or incurred while they remain in office; or if such directors shall, by any offi-

cial act or conduct, fraudulently induce any person to give credit to such corporation, they shall be liable in like manner to such person for any loss he may sustain thereby; but any director who voted against such dividend or such fraudulent act or conduct, if present, or who thereafter, as soon as the same came to his knowledge, file his objections thereto, shall be exempt from such liability.

Stockholders, liability of. Const., art. XI, § 3. Publishing false reports. § 1803. Wrongdoing of director. § 3225.

[As to liability of directors, see *Corbett v. Woodward*, 5 Saw. 404.]

§ 3232. Any corporation organized under this chapter which does not elect directors and commence the transaction of the business for which it was formed, within one year from the time of filing the articles of incorporation, shall thenceforth be divested of its corporate powers, and if such corporation shall, for any period of six months after the commencement of its business, neglect and cease to carry on the same, its corporate powers shall also cease.

Action to annul existence of charter. § 356. Who to prosecute same. § 359. Stockholders may vote to dissolve corporation. § 3235.

[An action for annulling existence of a corporation must be commenced by direction of governor of the State. *State v. Hullin*, 2 Ore. 306.]

§ 3233. All corporations that expire by limitation specified in their articles of incorporation, or are dissolved by virtue of the provisions of section 3235, or are annulled by forfeiture or other cause by the judgment of a court, continue to exist as bodies corporate for a period of five years thereafter, if necessary for the purpose of prosecuting or defending actions, suits, or proceedings by or against them, settling their business, disposing of their property, and dividing their capital stock, but not for the purpose of continuing their corporate business.

Judgment of dissolution. § 366.

§ 3234. The stockholders of any private incorporation heretofore incorporated by any special act of the legislature may at any time hereafter, while such corporation exists, incorporate themselves under this act, in the mode herein prescribed, for the purpose of carrying on the enterprise, business, pursuit, or occupation for which they may have been specially incorporated; and the filing of the articles of incorporation shall be deemed a surrender of such special incorporation, but not of any vested right thereunder, and thereafter such corporation shall have the powers and privileges, and be subject to

Increase or decrease, etc.; amendment; foreign corporations — Misc. L., §§ 3235-3238, 3272.

the liabilities and limitations, provided by this act, and not otherwise.

Corporation shall not be created by special laws. Const., art. XI, § 2. See § 3217.

§ 3235. Any corporation organized under the provisions of this chapter may, at any meeting of the stockholders which is called for such purpose, by a vote of the majority of the stock of such corporation, increase or diminish its capital stock or the amount of the shares thereof, or authorize the dissolution of such corporation, and the settling of its business and disposing of its property, and dividing its capital stock in any manner it may see proper.

General powers of corporation. § 3221. See §§ 3237-3238.

[Dissolution and disposition of corporate property is controlled by the stockholders. Moore v. Willamette, 7 Ore. 359.

In a suit to wind up an insolvent corporation all creditors and stockholders should be made parties. Brundage v. Mon. G. & S. M. Co., 12 Ore. 322; s. c., 1 Pac. Rep. 314.]

§ 3236. Any corporation formed for the purpose of navigating any stream or other water may, by virtue of such incorporation, construct any railway, macadamized road, plank road, or clay road, or canal or bridge, necessary and convenient for the purpose of transporting freight or passengers across any portage on the line of such navigation, occasioned by any rapids or other obstructions to the navigation of such stream or other water, in like manner and with like effect as if such corporation had been formed for such purpose.

See general powers of corporation. § 3221.

[Corporation organized for river transportation is not limited to one side of river at portage. R. R. Co. v. Bally, 3 Ore. 164.]

§ 3237. The stockholders may, by a majority vote of the stock, change its general place of business.

See § 3235.

§ 3238. (As amended February 21, 1893.) The directors of any corporation may file supplementary articles of incorporation at any time when a three-fourths vote of all the stock subscribed shall so determine, for the purpose of changing its corporate name or engaging in any business cognate or germane to the original objects or primary purpose of said corporation not in violation of law; or at any time when a seven-eighths vote of all the stock subscribed shall so determine, for the purpose of engaging in any new enterprise or pursuit not in violation of law, or for the purpose of changing any part of their road, or canal, or either terminus, or

both, when not in violation of law, or any contract entered into by said corporation. The directors shall cause a notice to be published of the filing of such supplementary articles, setting forth the object of the same.

Articles of Incorporation. § 3218. See § 3235.

CHAPTER XXXIII.

Of Foreign Corporations Doing Business in this State.

Sec. 3272. Certain foreign corporations not to do business in Oregon without compliance with this act.

3273. Deposit, how withdrawn, and notice of intention to cease business.

3274. Claims against corporation, how and when filed.

3275. Petition to circuit court for settlement of business; jurisdiction and proceedings in.

3276. Appointment of attorney by corporation.

3277. Who may be attorney for, and power and authority of.

3278. Fee of State treasurer and expenses of printing notices under this act.

3279. Surety companies may transact business.

3280. Terms and conditions for so doing.

3281. Proceedings, when served on secretary of State.

3282. Bonds and undertakings given by such company.

3283. Compensation to be allowed such company.

3284. Estoppel of company to deny its own powers.

3285. Owner of vessel, when deemed foreign corporation; agent to pay quarterly tax.

3286. Compensation of county treasurer and clerk.

3287. Record of licenses issued under this act.

3288. Penalty for acting as agent of vessel without license.

3289. Agent of vessel, who deemed to be.

3290. Life insurance agents to pay State one hundred dollars annually.

3291. Fees of State treasurer.

3292. Fees of secretary of State.

3293. Conditions imposed on foreign railway corporations, etc.

3294. Not to have greater rights than domestic corporations.

§ 3272. No foreign corporation or association shall be permitted to transact the business of fire or marine insurance, brokerage or express, within the limits of this State, without first complying with the provisions of section 2 of this act;* and every person acting or professing to act as agent for such foreign corporation, before such compliance, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one thousand dollars or imprisonment in the county jail not exceeding one year, or both, at the discretion of the court.

See § 516.

[The taking of a note for a premium by a resident agent of a foreign insurance company is

*Said section 2 reads as follows: "Every such corporation before engaging in the business of fire or marine insurance, or express or brokerage, shall deposit with the treasurer of this State the sum of fifty thousand dollars, as hereinafter provided."

"doing insurance business" within meaning of above section, though merely receiving and forwarding an application is not. *Hackney v. Leary*, 12 Ore. 10; s. c., 7 Pac. Rep. 329. And where company has not complied with statute regulating foreign insurance companies, such note is void. *Id.*

Corporations not of the class named under above section are not required to file their power of attorney before doing business in Oregon. *Singer Co. v. Graham*, 8 Ore. 17.]

§ 3273. When any corporation or association, having made such deposit, shall desire to cease business in this State and withdraw its capital, it may do so, by first giving six months' public notice of such intention by continuous publication in three weekly newspapers, published in and of general circulation in the State, and if no claim shall be filed against such corporation within said six months, the deposit may be withdrawn.

§ 3274. All residents of this State, having outstanding policies of insurance made or effected within this State upon property, and all persons having claims or demands against such corporations or associations, for which such deposit is security, may file the same with said county treasurer, prior to the time when such deposit is withdrawn, as in the preceding section is provided; and such deposit shall not be withdrawn until such policies of insurance are provided for, and such claims adjusted and settled, without leaving a sufficient amount to cover the same in the hands of such treasurer.

§ 3275. The corporation or association, desirous of discontinuing business, and withdrawing its deposit, may, at the expiration of the period required for publishing its notice, as in section 3273 provided, in case it cannot amicably adjust its matters with persons having or holding policies of insurance against it, petition the circuit court of the county for an adjustment of the same, making the claimants parties, and the court shall have full jurisdiction to examine and determine the same as in proceedings in equity.

§ 3276. A foreign corporation, before transacting business in this State, must duly execute and acknowledge a power of attorney, and cause the same to be recorded in the county clerk's office, of each county where it has a resident agent, which power of attorney, so long as such company shall have places of business in the State, shall be irrevocable, except by the substitution of another qualified person for the one mentioned therein as attorney for such company.

Corporation to appear by attorney only. § 1032. Secretary of State attorney for corporation. § 3280.

§ 3277. Such power of attorney shall appoint some person who is a citizen of the United States, and a citizen and resident of this State, an attorney for such company, and shall authorize and empower such at-

torney to accept service of all writs and process, requisite and necessary to give complete jurisdiction of such corporation to any of the courts of this State, or United States courts therein, and shall constitute such attorney the authorized agent of such corporation, upon whom lawful and valid service may be made of all writs and process in any action, suit, or proceeding commenced by or against any such corporation, in any of the courts mentioned in this section, and necessary to give such courts complete jurisdiction thereof.

Service of summons by publication. § 56.

[Foreign banking corporations cannot transact business in Oregon without recording the power of attorney, and cannot enforce a contract made unless they have complied with the laws. *Bank v. Page*, 6 Ore. 431; *In re Comstock*, 3 Saw. 219; *Temple v. Bank*, 5 id. 88.

These sections do not affect any foreign corporations except those named. *Mfg. Co. v. Graham*, 8 Ore. 17.]

§ 3278. A corporation or company offering to file a certificate of deposit with the State treasurer shall pay such treasurer a fee of ten dollars therefor, and all expenses of printing any notice required by this chapter shall be paid by the company concerning which such notice is published.

See §§ 3286, 3291, 3292.

§ 3279. Any surety company with a paid-up capital of five hundred thousand dollars incorporated under the laws of any State of the United States, solely for the purpose of transacting business as surety on obligation of persons or corporations, and which has complied with all the requirements of law, may transact such business in this State upon complying with the provisions of this act, and not otherwise.

§ 3280. No surety company not incorporated under the authority of this State shall directly or indirectly take risks or transact business in this State until it shall have first appointed the secretary of State of this State to be the true and lawful attorney of such company in and for this State, upon whom all lawful process may be served with the same effect as if the company existed in this State. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding in this State. A certificate of such appointment shall be filed in the office of the secretary of State, and copies certified by him shall be received in evidence in all the courts of this State. Service of process in actions and proceedings upon such attorney shall be deemed service upon the principal; but such principal shall be allowed thirty days there-

after within which to appear and plead in all such actions and proceedings.

Foreign corporation; appointment of attorney. § 3276. Service of process. §§ 55-56.

§ 3281. Whenever any lawful process against a surety company shall be served upon the secretary of State, he shall forthwith forward a copy of the process served upon him by mail postpaid and directed to the secretary of the company. For each copy of process the secretary of State shall collect the sum of five dollars, which shall be paid by the plaintiff at the time of such service; the same to be recovered by him as a part of the taxable costs if he prevails in the suit.

See § 3292.

§ 3282. Any surety company may, on production of evidence of solvency and credit satisfactory to the judge, court, head of department, or other officer authorized to approve any bond or undertaking, be accepted as surety upon the bond or undertaking of any person or corporation required by the laws of this State to execute a bond or undertaking; and if such company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted; but other surety may, in the discretion of the official authorized to approve such undertaking, be required, and such surety (surety company) may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals; it being the true intent and meaning of this act to enable corporations created for that purpose to become surety on bonds or undertakings required by law subject to all the rights and liabilities of private parties.

Security for costs. § 566.

§ 3283. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond or undertaking, may, whenever such person or corporation has given any such surety company as surety upon said bond or undertaking, allow in the settlement of such account a reasonable sum for the expense of securing such surety.

§ 3284. Any company which shall execute any bond or undertaking as surety under the provisions of this act shall be estopped, in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability.

§ 3285. The owner or owners of any vessel propelled in whole or in part by steam, owned without this State, and engaged in navigating the waters of this State, or plying between any port of this State and any port

or place without this State, is a foreign corporation within the meaning of this chapter; and the resident agent of such vessel is the attorney of such corporation within the meaning of this chapter, and shall pay into the county treasury of the county in which he resides the sum of twenty-five dollars per quarter as such agent or attorney, and upon the production of the county treasurer's receipt for such sum the county clerk shall issue a license to such agent or attorney to act as such for the ensuing three months from the date of such license.

See § 516. Penalty for acting as agent without license. § 3288.

§ 3286. Each county treasurer shall be entitled to receive and retain three per centum of all moneys received by him under this chapter, and each county clerk shall be entitled to demand and receive from the person applying for such license the sum of two dollars for issuing the same.

See § 3278, and cross-references.

§ 3287. The county clerk shall record all licenses issued by him under the provisions of this chapter, specifying therein the date of such license, the amount of quarterly tax, to whom issued, and for what purpose. On the first day of each month, such clerk shall prepare and transmit to the secretary of State a certified copy of such record.

§ 3288. Any person who shall act as agent or attorney for any vessel without having first obtained the license prescribed in this chapter shall forfeit and pay to the State of Oregon the sum of one hundred dollars, to be recovered by action in the name of the State as other fines and penalties are recovered.

§ 3289. Any person who acts or professes to act as the agent, representative, or business man of any vessel mentioned in section 3285 of this chapter, within this State, shall be deemed the agent or attorney thereof within the meaning of this chapter.

Penalty for acting as agent without license. § 3288. Jurisdiction of court. § 516.

§ 3290. All companies having agents or solicitors doing business within the State as life insurance agents or solicitors shall pay to the treasurer of this State the sum of one hundred dollars annually, in gold coin of the United States of America.

§ 3291. The fees of the State treasurer for carrying out such portion of the provisions of this chapter as shall pertain to his office shall be as follows:—

For keeping such deposits, and for returning to depositors the coupons on all bonds deposited by them, one-eighth of one per centum per annum on all amounts so deposited in his charge.

See § 3278.

§ 3202. The fees of the secretary of State for carrying out such portions of this chapter as pertain to the duties of his office shall be as follows: —

For recording each certificate of deposit and issuing such certificate to depositors, twenty-five dollars.

For issuing license to life insurance agents or solicitors annually, ten dollars.

For commission on the sale of stamps, as provided in section 16 of this chapter, five per centum of the amount so sold.

See § 3278, and cross-references.

§ 3203. Any foreign corporation incorporated for the purpose of constructing, or constructing and operating, or for the purpose of or with the power of acquiring and operating, any railway, macadamized road, plank road, clay road, canal, or bridge, or for the purpose of conducting water, gas, or other substance by means of pipes laid under the ground, shall, on compliance with the laws of this State for the regulation of foreign corporations transacting business therein, have the same rights, powers, and privileges in the exercise of the rights of eminent domain, collection of tolls, and other prerogative franchises, and in the control, management, and disposition of their business franchises and property, as are possessed by corporations organized for similar purposes under the general incorporation laws of this State.

Provided always, That in the case of the leasing of any line of railroad incorporated under the laws of this State by a foreign corporation, such leasing shall be upon the fundamental condition following, and not otherwise: —

1. That such foreign corporation shall enter into an agreement in writing with the State of Oregon, duly executed by said corporation,

to be signed by its president and attested by its secretary, which agreement shall be filed with the secretary of State of the State of Oregon, whereby and wherein said foreign corporation shall agree that in all suits or actions by and between said foreign incorporation and a citizen or citizens of this State during the continuance of such lease shall be prosecuted or defended to a final determination in the courts constituted by the laws of this State, excepting in cases where such action or suit shall be commenced in or removed to the federal courts by a citizen of this State, and upon the failure to comply with the terms of such agreement by such foreign corporation, such lease shall utterly determine and be rendered null and void at the option of the legislative assembly of the State of Oregon.

2. That the State of Oregon reserves to itself, through its legislative assembly, and in such manner as it shall determine, the right, power, and authority to prescribe the rate to be charged for the transportation of person and property on such leased lines, and also to prescribe and make such police regulations for the government of such roads as it may from time to time determine.

Property not to be taken by corporation without compensation. Const., art. I, § 18. General powers of corporation. § 3221, subd. 7. Election of directors. § 3222.

§ 3204. Nothing in this act contained shall be so construed as to give to any foreign corporation or corporations any other or further rights, powers, or privileges than may be acquired or exercised by corporations incorporated under the laws of this State; but only so as to give foreign corporations the same rights, powers, and privileges, on a compliance with the laws of this State, as may be acquired or exercised by corporations incorporated under the laws of this State.

SPECIAL ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1887.

1. To provide for payment of employes by receivers.
2. Simplified proceedings in justices' courts.

Act 1.

AN ACT to further simplify proceedings in justices' courts.

Be it enacted by the legislative assembly of the State of Oregon:

§ 5. * * * If the defendant be a corporation, service of the summons may be made upon it by delivering a copy thereof to the president, secretary, or managing or local agent of such corporation.

§ 8. Chapter IV and section 80 of chapter IX of the Justices' Code as compiled by Matthew P. Deady and Lafayette Lane be and the same are hereby repealed.

(Filed in the office of the secretary of State, February 20, 1893.)

See § 55-56.

Act 2.

AN ACT to provide for the payment of laborers and employes by receivers of corporations, firms, and persons.

Be it enacted by the legislative assembly of the State of Oregon:

Section 1. Whenever the business or property of any person, company, or corporation

Payment of employes by receivers — Act, February 20, 1893.

in this State shall be placed by any court in this State in the hands of a receiver, whether upon foreclosure or creditor's bill, it shall be the duty of such receiver to report immediately to the court so appointing him, the amount due by said person, company, or corporation, at the date of such receiver's appointment, to employes and laborers of such person, company, or corporation; and it shall be the duty of said court to order the said receiver to pay out of the first receipts and earnings of said person, company, or corporation, after paying current operating expenses under his administration, the wages of all employes and laborers which had accrued within six months prior to the appointment of such receiver. It shall also be the duty of such court to order such receiver to pay the wages of all employes and laborers employed by him at least once every thirty days, out of the first receipts and earnings of such person, company, or corporation while under his management; but

should such receiver not take in sufficient moneys from the receipts and earnings of such person, company or corporation to pay such employes and laborers, at least once every thirty days, then such receiver shall issue and deliver to each of such employes and laborers, upon demand, a receiver's certificate, showing the amount due such employe or laborer in money, which certificate shall draw interest at the rate of eight per cent. per annum from the date of its issuance until paid; and such receiver shall thereafter pay such certificates out of the first moneys coming into his hands from the receipts and earnings of the properties under his charge in the order of their issuance.

§ 2. Inasmuch as an emergency exists which calls for the immediate operation of this act, this act shall take effect and be in operation from and after its approval by the governor.

(Approved February 20, 1893.)

See § 1061.

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LEGISLATIVE ACTS ENACTED SUBSEQUENTLY TO 1894.

PENNSYLVANIA.

CONSTITUTION OF PENNSYLVANIA — 1875.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

Sec. 17. Laws impairing the obligation of contracts, or making irrevocable grants, prohibited.

ARTICLE III.

Legislation.

Sec. 7. Local and special laws prohibited in certain cases.
24. No obligation of corporation to the State to be released.

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3. Power to tax corporations not to be surrendered.
6. State credit not to be loaned to corporations.
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13. The word "corporation" defined.

ARTICLE I.

Declaration of Rights.

§ 17. No ex post facto law, nor any law impairing the obligation of contracts, or

making irrevocable any grant of special privileges or immunities, shall be passed.

Special laws prohibited. Art. III, § 7. Repeal of charter authorized. Art. XVI, § 10. Notice of bills to create banks. Id., § 11. All charters subject to alteration by legislature. Corporation, § 108. Legislation in interest of corporation, prerequisite. Id., § 120.

[When a power to alter, amend or repeal is reserved in a charter, its exercise does not impair the obligation of the contract. Comm. v. Fayette, 55 Penn. St. 452.]

Governor will not grant a charter to a proposed ferry company to include practically the same terms as those of another corporation chartered by a special act of assembly giving an exclusive right. Matter v. Ferry Co., 14 Penn. C. C. 10; s. c., 33 W. N. C. 180.]

ARTICLE III.

Legislation.

§ 7. The general assembly shall not pass any local or special law:
* * * * *

Exempting property from taxation;

Regulating labor, trade, mining or manufacturing;

Creating corporations, or amending, renewing, or extending the charters thereof;

Granting to any corporation, association, or individual, any special or exclusive privilege or immunity, or to any corporation, association, or individual, the right to lay down a railroad track;

Nor shall the general assembly indirectly enact such special or local law, by the partial repeal of a general law; but laws repealing local or special acts may be passed;

Nor shall any law be passed granting powers or privileges, in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same, or give the relief asked for.

See art. I, § 17, and cross-references. Taxation, power not to be surrendered, exemptions. Art. IX, §§ 1-3. Charter not to be amended except on condition. Art. XVI, § 2. Right of eminent domain not to be abridged. Id., § 3. No law to create more than one charter. Id., § 10. Corporation, how formed. Corporations, § 1. Amend-

Taxation; corporations — Const., Art. ix, §§ 1-7; Art. xvi, §§ 1-3.

ment of charter regulated. *Id.*, § 76. Certain charters validated. *Id.*, § 105. Exemption from taxation. Taxation, § 520.

[Above section is prospective, and does not repeal local or special acts in force prior to 1874. *Allegheny Co. v. Gibson*, 90 Penn. St. 397.

A charter will not be granted, unless it appear by articles that there is a necessity or a substantial advantage to be obtained by an incorporation. *Duch Nove Lodge*, 3 Penn. Dist. Rep. 215.

Incline plane companies have no exclusive privilege, and it is no objection to granting of a charter that another company had previously located its road, and that route of proposed corporation would interfere with proposed extended route of the old company. *Plane Co. v. Grand-View Plane Co.*, 15 Penn. C. C. 568.]

§ 24. No obligation or liability of any railroad or other corporation, held or owned by the commonwealth, shall ever be exchanged, transferred, remitted, postponed, or in any way diminished, by the general assembly; nor shall such liability or obligation be released, except by payment thereof into the State treasury.

State credit not to be loaned to corporation. Art. IX, § 6.

ARTICLE IX.

Taxation.

Section 1. All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

See art. III, § 7. Taxation, general provisions, §§ 1-114.

§ 2. All laws exempting property from taxation, other than the property above enumerated, shall be void.

Laws exempting property from taxation prohibited. Art. III, § 7. Manufacturing corporation to be exempt from taxation. Taxation, § 520.

§ 3. The power to tax corporations and corporate property shall not be surrendered or suspended, by any contract or grant to which the State shall be a party.

See art. III, § 7.

§ 6. The credit of the commonwealth shall not be pledged or loaned to any individual, company, corporation, or association; nor shall the commonwealth become a joint owner or stockholder in any company, association, or corporation.

See art. III, § 24.

§ 7. The general assembly shall not authorize any county, city, borough, township, or incorporated district to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution, or individual.

See Corporations. § 39.

[The purpose of this section is to prevent the money of the people from passing into the control of private, irresponsible associations or parties. *Speer v. School Directors*, 50 Penn. St. 150; *Ahl v. Gleim*, 52 *Id.* 432.]

ARTICLE XVI.

Private Corporations.

Section 1. All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

See Corporations, §§ 6 et seq. Writ of quo warranto may issue. See Quo warranto, § 2. Corporation not organized within two years. See Corporations, § 126.

[Above section is not a violation of the provision in the United States Constitution forbidding State to pass laws impairing the obligation of contracts. *Lumber Co. v. Commonwealth*, 100 Penn. St. 438; *Lejee v. R. R. Co.*, 2 W. N. C. 170; *Douglass' App.*, 118 Penn. St. 65; s. c., 12 Atl. Rep. 834.]

§ 2. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

See art. III, § 7. Amendments to charter. See Corporations, §§ 73 et seq. Power to revoke charters reserved. *Id.*, § 14.

[See *Williamsport R. R. Co.'s App.*, 120 Penn. 1.]

§ 3. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

See art. III, § 7. Taking private property to be compensated. Art. XVI, § 8.

[See *In re Towanda Bridge Co.*, 91 Penn. St. 216.]

Corporations — Const., Art. xvi, §§ 4-10.

§ 4. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

See Corporations, § 31.

[Above section applies without further legislation to all private corporations incorporated since 1874. *Pierce v. Commonwealth*, 41 Leg. Int. 281.

"The whole number of his votes" means as many votes for each share as there are directors to be elected. *Commonwealth v. Lintsman*, 23 Pitts. L. J. 122.

The above section, as well as the rest of the article, may, under the Act of May 22, 1878 (P. L. St. § 2), be accepted by a resolution of the directors of a corporation, ratified by vote of the stockholders at the annual meeting. *Baker v. Pepper*, 14 W. N. C. 560; see *Hays v. Commonwealth*, 82 Penn. St. 518.

Where charter of a corporation provided that salaried officers should not be elected directors, the fact that after the Act of May 20, 1891, salaried officers were elected directors was held not to make corporation subject to provision of Constitution of 1874 relative to cumulative voting. *Commonwealth v. Butterworth*, 160 Penn. St. 55; s. c., 28 Atl. Rep. 507.

Where charter of a corporation antedates the Constitution of 1874, and there is no averment that company has taken advantage of legislation since that year, cumulative voting will not be allowed at an election of directors. *Dick v. R. R. Co.*, 4 Penn. Dist. R. 56.]

§ 5. No foreign corporation shall do any business in this State, without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

Officer and agent within State. See Foreign Corporations, § 1. Service of process. *Id.*, § 12.

[See *Hagerman v. Slate Co.*, 97 Penn. St. 534; *Retterly v. Machine Co.*, 4 W. N. C. 525; *Wile v. Onsel*, 1 D. R. 188.]

§ 6. No corporation shall engage in any business other than that expressly authorized in its charter; nor shall it take or hold any real estate, except such as may be necessary and proper for its legitimate business.

See Corporations, §§ 1-4. Specific powers. See Foreign Corporations, §§ 8-10. General powers. See Iron and Steel Manufacturing Companies, §§ 1 et seq. Business specified by charter only to be conducted. See Manufacturing Companies, § 13. Duties of secretary of internal affairs. See Secretary of Internal Affairs, § 4.

§ 7. No corporation shall issue stocks or bonds, except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held, after

sixty days' notice, given in pursuance of law.

Preferred stock, authority to issue, etc. See Corporations, §§ 30-43. Increase of capital stock. *Id.*, §§ 45 et seq.

[When a bank, without the consent of its stockholders, executes a mortgage upon its property to secure the debt of a creditor, which consists of deposits in the bank, the execution of its mortgage is not an increase of indebtedness such as is prohibited by this section. *Lewis v. Jefferies*, 86 Penn. St. 340; *Ahl v. Rhoads*, 84 id. 319; *Powell v. Blair*, 133 id. 550; s. c., 19 Atl. Rep. 559; *Rothschild v. R. R. Co.*, 1 Penn. C. C. 620. A street railway is a private corporation within the meaning of this section. And neither by its charter or its by-laws can it disregard the constitutional requirement of notice to stockholders of a proposed increase of stock. *Shepp v. Ry. Co.*, 13 Penn. C. C. 254; s. c., 2 D. R. 679; see *Columbia Bank's App.*, 16 W. N. C. 357; *Chartiers v. R. R. Co.*, 1 Penn. C. C. 270.]

§ 8. Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury, or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals, made by viewers or otherwise; and the amount of such damages, in all cases of appeal, shall, on the demand of either party, be determined by a jury, according to the course of the common law.

Right of eminent domain. Art. XVI, § 3. Assessment of damages. See Corporations, § 91.

[A corporation or an individual must pay or secure price of property before it is taken; but when the State exercises the power, it is not necessary that compensation should be actually paid before property is appropriated. *Navigation Co. v. Coons*, 6 W. & S. 101; *Pittsburgh v. Scott*, 1 Penn. St. 309; *Commissioners v. Wood*, 10 id. 93; *Yost's Report*, 17 id. 524; *McClinton v. R. R. Co.*, 66 id. 404.]

§ 9. Every banking law shall provide for the registry and countersigning, by an officer of the State, of all notes or bills designed for circulation; and that ample security to the full amount thereof shall be deposited with the auditor-general, for the redemption of such notes or bills.

Notice of bills to create banks. Art. XVI, § 11.

§ 10. The general assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing, and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the

Corporations — Const., Art. xvi, §§ 11-13.

citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

Laws impairing obligation of contracts prohibited. Art. I, § 17. Charter. See Corporations, § 6. Amendments to charters. Id., §§ 73-79. Charters subject to power of legislature. Id., § 108.

[To create, renew, or extend a charter means to make a charter which never existed before, to revive an old one which has expired, or to increase the time for the existence of one which would otherwise reach its limit at an earlier period. *Moers v. City*, 21 Penn. St. 188; *Cleveland v. City*, 27 Id. 380. See *Wagner v. Philadelphia*, 18 Phila. 285; *Bank v. City*, 37 Penn. St. 340. Legislature is not the sole and exclusive judge of the fact of misuse or abuse upon which their power to revoke is conditioned. *Commonwealth v. Pittsburg*, 58 Penn. St. 26.]

§ 11. No corporate body to possess banking and discounting privileges, shall be created or organized, in pursuance of any law, without three months' previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law; nor shall a charter for such privi-

lege be granted for a longer period than twenty years.

See art. I, § 17. Banking Law shall provide for, what. Art. XVI, § 9.

[The word "discounting" is used in its banking sense. *Building Assn. v. Seemiller*, 15 Leg. Int. 132; *Schober v. Assn.*, 35 Penn. St. 223; *Insurance Co. v. Newcomb*, 4 Leg. Gaz. 409. See renewal of bank charters, 14 Penn. C. C. 144.]

§ 12. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State and to connect the same with other lines; and the general assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company, owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

§ 13. The term "corporations," as used in this article, shall be construed to include all joint-stock companies or associations, having any of the powers or privileges of corporations not possessed by individuals or partnerships.

See Corporations, §§ 1 et seq.

THE GENERAL LAWS OF PENNSYLVANIA—1894.

[The following arrangement of the laws of Pennsylvania is taken from Pepper and Lewis' Digest, by permission of the publishers, Messrs. T. & J. W. Johnson & Co., Philadelphia.]

Appeals.

II. APPEAL PROCEEDINGS.

- Sec. 32. In appeals by corporations, affidavits to be made by certain officers; bail absolute required.
 40. Bail absolute required in appeals by corporations.
 41. Foreign corporations required to give bail absolute.

§ 32. In case of appeal, certiorari or writ of error, by any corporation, the oath or affirmation required by law, shall be made by the president or other chief officer of the corporation, or in his absence by the cashier, treasurer or secretary; and when any corporation shall be sued and shall appeal or take a writ of error, the bail requisite in that case shall be taken absolute for the payment of the debt, interests and costs on affirmance of the judgment.
 (1817, March 22 6 Sm. L. 438, § 4.)

See Corporations, § 85.

[The requirement of bail in error is not to found the writ, but to make it a supersedeas of execution. *Savings Ins. v. Smith*, 7 Penn. St. 291. See, also, *Magill v. Kauffman*, 4 S. & R. 517. This act applies to all corporations. *Washington Co. v. Cullen*, 8 S. & R. 517.

Act not repeated but enlarged by Act of June 11, 1822 (P. L. 611), and the affidavit may be made by a special deputy of the corporation. *Academy v. Power*, 14 Penn. St. 442.]

§ 40. When any corporation (municipal corporations excepted), being sued, shall appeal or take a writ of error, the bail requisite in that case shall be taken absolute, for the payment of debt, interest and costs on the affirmance of the judgment.
 (1847, March 15; P. L. 361, § 1.)

Nature of bail required. See Corporations, § 88.

[The act applies only to suits against corporations for liabilities incurred by them as corporations, not to cases where the corporation is acting as trustee. *Nixon's Est.*, 8 W. N. C. 391.]

§ 41. In all suits or actions hereafter to be brought in any court of record of this commonwealth, against any foreign corporation, or body corporate not holding its charter under the laws of this commonwealth, every judgment, verdict or award rendered against such corporation, shall be final and conclusive, unless the said defendants, in addition to the usual proceedings in cases of appeal, shall give good and sufficient bail, in the nature of bail absolute, for the payment of such sum or sums as

shall be finally judged to be due to the plaintiff or plaintiffs, together with interest and costs thereon.

(1849, March 21; P. L. 216, § 3.)

See Corporations, § 80. Bail required. See Foreign Corporations, § 13.

Common Pleas.

III. EQUITY JURISDICTION.

- Sec. 19. Equity jurisdiction of the common pleas.
 20. Jurisdiction of common pleas of Philadelphia county.

§ 19. The several courts of common pleas shall have the jurisdiction and powers of a court of chancery, so far as relates to:

V. The supervision and control of all corporations other than those of a municipal character, and unincorporated societies or associations, and partnerships.

* * * * *

See Corporations, § 80.

[The jurisdiction is general and unlimited over corporations. *Commonwealth v. Bank*, 3 W. & S. 184; *Sandford v. R. R. Co.*, 24 Penn. St. 38; *Sarver's App.*, 81 Id. 193; *Frailey v. Stockwell*, 2 D. R. 197; s. c., 12 Penn. C. C. 403.

Court may appoint a master to report upon the facts of a case before it. *Phillip's App.*, 68 Penn. St. 139.

The court may decree the removal of the assignee of a corporation. *Frailey v. Stockwell*, 2 D. R. 197; s. c., 12 Penn. C. C. 403.

It has no jurisdiction to appoint receivers for a foreign corporation doing business in this State without having conformed to the laws relating to registry, etc. *Fille v. Organ Co.*, 2 Del. Co. R. 431.

The court may appoint a master to conduct a corporate election where there is reason to believe injustice will be done. *Tunis v. R. R. Co.*, 1 D. R. 135; affirmed in *Tunis v. R. R. Co.*, 149 Penn. St. 80; s. c., 30 W. N. C. 96.]

§ 20. The court of common pleas for the said city and county [of Philadelphia] shall, besides the powers and jurisdiction aforesaid, have the power and jurisdiction of courts of chancery, so far as relates to:

I. The supervision and control of partnerships, and corporations other than municipal corporations.

* * * * *

See Corporations, § 80.

Corporations.

I. Incorporation.

- Sec. 1. How corporations may be formed; corporate powers.
 2. Classification and power to hold real estate.
 3. Corporations of second class to include corporations for the purpose of driving and floating logs, etc.
 4. Traction motor companies.
 5. Effect of incorporation.

Incorporation of corporations.

II. Mode of Incorporation.

- Sec. 6. Certificate and notice of application for charter.
 7. Acknowledgment of certificate of association.
 8. Charter may provide for the election of officers at stated times.
 9. Ratification of such provisions in charters heretofore granted.
 10. Corporations of second class to be registered; existing corporations may acquire the privileges of this act.
 11. All corporations must be registered.
 12. Renewal of charter; how effected.
 13. Letters-patent may be issued to certain corporations.
 14. Charters may be perpetual or limited; power to revoke reserved.
 15. Court to limit yearly income.

III. By-Laws and Management of Corporations.

- Sec. 16. By-laws.
 17. Officers; their duties.
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 19. Directors and stockholders may alter the times and places of meeting.
 20. Directors may be divided into classes.
 21. Such classification heretofore made by charter declared valid.
 22. Stockholders may fix the number of directors and time of annual elections.
 23. Filling of vacancies.
 24. Meetings of certain corporations may be held out of the State; annual elections excepted.
 25. Quorum of stockholders; how determined.
 26. When number of directors is increased, a majority to constitute a quorum.
 27. Salaried officers may serve as directors.
 28. Certain offices declared incompatible.
 29. Certain contracts declared void.

IV. Corporate Elections.

- Sec. 30. Officers holding election to be sworn.
 31. Cumulative voting.
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 33. When beneficial owner of stock may vote.
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 35. Voting by proxy.
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 41. General authority to issue preferred stock.
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 43. Stock may be issued in exchange for property; fictitious increase forbidden; deferred stock.
 44. Stock to be personal property; not transferable while calls are unpaid; notes not considered payment; funds not to be invested in stock of other corporations.

VI. Increase of Capital Stock and Indebtedness.

- Sec. 45. Increase of capital stock or indebtedness.
 46. Meeting of stockholders to be called.
 47. Election in regard to increase.
 48. Ballots; shares transferred, and proxies; statement to be furnished judges of election.

- Sec. 49. If increase allowed, return of election to be filed with secretary of commonwealth; return to be recorded.
 50. Report to be made to auditor-general.
 51. Bonus on increase of capital stock.
 52. Increase of capital stock and indebtedness of corporations created under the Act of 1874.
 53. Meeting of stockholders to vote on increase.
 54. Election in regard to increase.
 55. Ballots; shares transferred, and proxies; statement to be furnished judges of election.
 56. If increase allowed, return of election to be filed with secretary of commonwealth; return to be recorded.
 57. Amount of increase authorized.
 58. Bonus on increase of capital to be paid by certain corporations.

VII. Reduction of Capital Stock.

- Sec. 59. Corporations may reduce capital stock, or change par value of shares; may convey franchises and property.
 60. Manner of reducing capital stock.
 61. Meeting of stockholders to be called, and notice published.
 62. Conduct of election in regard to reduction; result to be declared.
 63. Ballots; proxies; statement to be furnished judges.
 64. Copy of return to be filed with secretary of commonwealth; return to be recorded.

VIII. Power to Mortgage.

- Sec. 65. Corporations may borrow money on bond and mortgage.
 66. Loan to redeem previous loans authorized.
 67. Security of bonded indebtedness may be increased.

IX. Liability of Stockholders.

- Sec. 68. Individual liability of stockholders.
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 70. Individual liability restricted.
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X. Amendments to Charters.

- Sec. 73. Corporations formed under general act may amend.
 74. Notice of application for amendment.
 75. Certificate and proof of publication; letters-patent to issue; certificate to be recorded.
 76. Amendments regulated.
 77. Amendment of charters of corporations of first class; merger and consolidation.
 78. Charters granted by the legislature to be amended by the courts in certain cases.
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XI. Suits Against Corporations.

- Sec. 80. How suits may be brought.
 81. What shall be deemed sufficient service.
 82. Service in actions for damages, when office is out of county.
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Incorporation — Gen. Laws, § 1.

- Sec. 86. Service of notice when corporation is party to a suit.
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 88. Nature of bail required on appeal by corporations.
 89. Suits against corporations whose principal office is out of the State.
 90. Corporations to pay counsel fees in certain cases.
 91. Construction of foregoing act.
 92. Existence of corporation to be taken as admitted, unless put in issue.
 93. Right of individual, etc., to question corporate power.

XII. Assessment of Damages.

- Sec. 94. Assessment of damages and proceedings thereon.

XIII. Dissolution of Corporation.

- Sec. 95. Courts may accept surrender of powers and decree dissolution.
 96. In what county proceedings to be instituted.
 97. Dissolution upon quo warranto.
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XIV. Sale of Corporate Franchises and Property.

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- Sec. 105. Certain charters validated.
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 109. Time for holding real estate bought under execution or taken in satisfaction of debts extended.
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 112. Jurisdiction of court in suits between stockholders and others.
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 114. In case of sale, letting or mortgaging of real estate, copy of minutes to be prima facie evidence, and may be recorded.
 115. Informal acknowledgments by corporations legalized.
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 117. Title to real estate of corporations sold at sheriff's sale secured.
 118. Probate of minutes by ex-officer after dissolution sufficient.
 119. Sale, lease or mortgage not to be invalidated by informality in execution of instrument.
 120. Acceptance of Constitution a prerequisite to legislation in the interest of any corporation.
 121. How such acceptance to be made.
 122. Resolution of acceptance to be recorded.

- Sec. 123. Execution of trusts; who shall make oath.
 124. Lease of works by one corporation to another; settlement of accounts.
 125. Work to be prosecuted in good faith; time may be extended; method of procedure for extension.
 126. Corporations of second class not organized within two years to forfeit charters.
 127. Payment of dividends due the commonwealth.
 128. Auditor general to transfer stock sold by the State.
 129. Private corporations may purchase stock of the American Steamship Company.
 130. Secretary of State to publish list of charters.
 131. How certain acts of the legislature to be designated.
 132. Investment of surplus by corporations; election of directors.

I. INCORPORATION.

Section 1. Corporations may be formed under the provisions of this act by the voluntary association of five or more persons, for the purposes and in the manner mentioned herein, and when so formed, each of them by virtue of its existence as such shall have the following powers, unless otherwise specially provided:

General Powers.

I. To have succession by its corporate name for the period limited by its charter, and when no period is limited thereby, or by this act, perpetually, subject to the power of the general assembly, under the Constitution of this commonwealth.

II. To maintain and defend judicial proceedings.

III. To make and use a common seal and alter the same at pleasure.

IV. To hold, purchase and transfer such real and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter or by law.

V. To appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them a suitable compensation.

VI. To make by-laws not inconsistent with law, for the management of its property, the regulation of its affairs, and the transfer of its stock.

VII. To enter into any obligation necessary to the transaction of its ordinary affairs.

(1874, April 29; P. L. 73, § 1.)

See Const., art. III, § 7. "Corporation" defined. Id., art. XVI, § 13; see Acts Nos. 4, 5, at pp. 71, 72.

[Companies organized under this act partake of the nature of limited partnerships; and shareholders who continue business after the expiration of their charter, assume a liability as in ordinary partnership. *Githens v. Grocery Co.*, 2 Del. Co., 452.

A married woman cannot be one of the five persons requisite to form a corporation under this act. In re Century Club, 27 W. N. C., 399.

Under act of April 29, 1874, there must be five persons, free from all legal disability, to form a corporation, this number must be exclusive of married women. *Potter Gas Co.*, 15 Penn., C. C., 347.

An application for a charter may be amended by eliminating from the purposes certain unauthorized statements. *Suburban Gas Co.*, 15 Penn., C. C. 126; s. c., 14 id., 519.

Corporation has the right to purchase its own stock where transaction is made in good faith and is not prohibited by statute. *Dock v. Cordage Co.*, 167 Penn. St. 370; s. c., 31 Atl. Rep. 656.

Where a corporation has entered into a contract which has been fully executed on one part, and nothing remains but for it to pay the consideration money, it will not be allowed to say the contract was ultra vires. *Ins. Co. v. Brownback*, 1 Penn. Sup. Ct. R. 183.

A corporation organized for the purpose of "manufacturing and supplying illuminating gas" may deal in appliances for the consumption of gas, as well as for its manufacture and distribution. *Malone v. Lancaster Gas Light & Fuel Co.*, 37 Atl. Rep. 932.

Though a corporation legally entered into a partnership, it must account to the other partner, who has fulfilled his obligations. *Boyd v. American, etc., Co.*, 37 Atl. Rep. 937.

Where one sues a corporation as a member of a firm, the fact that he is a stockholder does not authorize him to assert his rights as such. *Id.*

The rights of creditors of a corporation as against a judgment entered on a judgment note, because of its insolvency when the note was executed, cannot be determined on an application to vacate the judgment. *Hall v. West Chester Pub. Co.*, 37 Atl. Rep. 106.

Contract between stockholders construed, and held not to show a sale by one of them to the corporation. *Poterie Gas Co. v. Poterie*, 36 Atl. Rep. 232.

Confession of judgment by corporation held not fraudulent, though the directors are incidentally relieved from liability. *Mueller v. Monongahela Fire Clay Co.*, 38 Atl. Rep. 1009.]

§ 2. The purposes for which the said corporations may be formed shall be as follows, and shall be divided into two classes:

Corporations not for Profit—First Class.

The first class those for—

- I. The support of public worship.
- II. The support of any benevolent, charitable, educational or missionary undertaking.
- III. The support of any literary, medical or scientific undertaking, library association, or promotion of music, painting or other fine arts.
- IV. The encouragement of agriculture and horticulture.
- V. The maintenance of public or private parks, and of facilities for skating, boating, trotting and other innocent or athletic sports, including clubs for such purposes, and for the preservation of game and fish.
- VI. The maintenance of a club for social enjoyments.
- VII. The maintenance of a public or private cemetery.
- VIII. The erection of halls for public or private purposes.
- IX. The maintenance of a society for beneficial or protective purposes to its members, from funds collected therein.
- X. The support of fire engine, hook and

ladder, hose or other companies for the control of fire.

XI. For the encouragement and protection of trade and commerce.

XII. For the formation and maintenance of military organizations.

Each of said corporations may hold real estate to an amount the clear yearly value or income whereof shall not exceed twenty thousand dollars.

Corporations for Profit—Second Class.

The second class those for—

- I. The insurance of the lives of domestic animals.
- II. The insurance of human beings against death, sickness or personal injury.
- III. The prevention and punishment of theft or wilful injuries to property, and insurance against such risks.
- IV. The construction and maintenance of any species of road other than a railroad, and the bridges in connection therewith.
- V. The construction and maintenance of a bridge over streams within this State.
- VI. The construction and maintenance of a telegraph line.
- VII. The establishment and maintenance of a ferry.
- VIII. The building of ships, vessels or boats, and carriage of persons and property thereon.
- IX. The supply of water to the public.
- X. The supply of ice to the public.
- XI. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.
- XII. The transaction of a printing and publishing business.
- XIII. The establishment and maintenance of an hotel and drove yard, or boarding-house, opera and market-house, livery or boarding stable, or either.
- XIV. The creating, purchasing, holding and selling of patent rights of inventions and designs, with the right to issue license for the same and receive pay therefor.
- XV. Building and loan associations.
- XVI. (As amended June 25th, A. D. 1895.) Associations for the purchase and sale of real estate, or for holding, leasing and selling real estate, for maintaining or erecting walls or banks for the protection of low-lying lands, for safe deposit companies, and for buying, selling, trading or dealing in any kind or kinds of goods, wares and merchandise at wholesale.
- XVII. The manufacture of iron or steel, or both, or of any other metal, or of any article of commerce from metal or wood, or both.
- XVIII. The carrying on of any mechanical, mining, quarrying or manufacturing business, including all of the purposes covered by the provisions of the acts of the general assembly, entitled "An act to encourage manufacturing operations in this common-

wealth," approved April 7, 1849, and entitled "An act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18, 1863, and the several supplements to each of the said acts, including the incorporation of grain elevator, storage warehouse and storage yard companies, and also including the storage and transportation of water, with the right to take rivulets and lands and erect reservoirs for holding water, and excluding the distilling or manufacture of intoxicating liquors.

XIX. The insurance of owners of real estate, mortgages and others interested in real estate, from loss by reason of defective titles, liens and incumbrances.

XX. The rechartering of corporations of either of these classes, the charters whereof are about to expire.

XXI. The construction and maintenance of a wharf or wharves for public and private use, and the maintenance of any unincorporated wharf or wharves already constructed.

XXII. The construction, erection and maintenance of observatories for public use or scientific purposes.

XXIII. The formation and operation of stages and omnibus lines.

XXIV. The formation and operation of inclined planes for the transportation of passengers and freight.

XXV. The construction and maintenance of sewers, culverts, conduits and pipes, with all necessary inlets and appliances for surface, under-surface and sewage drainage for the health, comfort and convenience of inhabitants, and sanitary improvement in cities, boroughs and townships of the commonwealth, and for this purpose to enter upon and occupy any public highway with the consent of the local authorities.

(1893, June 10; P. L. 435.)

See Const., art. XVI, § 6; Iron and Steel Manufacturing Companies, § 2.

[A corporation cannot be organized to carry on a mercantile business of buying and selling, under this act; if a charter contains such power it is, to that extent, void; but good so far as it contains powers authorized by the act. *Commonwealth v. Mfg. Co.*, 156 Penn. St. 510; s. c., 27 Atl. Rep. 13.

A corporation for mining and boring for petroleum, buying, shipping and transporting the same, is a mining company within the meaning of the act. In re *Mining Co.*, 9 Penn. C. C. 323.

A corporation for manufacture and sale of gas may be chartered, as of the second class, and the franchises of such company would not conflict with the exclusive privileges granted companies formed under eleventh division of the second class. In re *Dauphin Co.*, 1 Penn. C. C. 480.

An association of coal dealers, organized for purpose of maintaining prices, not entitled to a charter; such combinations are not within meaning of clause authorizing companies "for the encouragement and protection of trade and commerce." In re *Coal Co.*, 9 Penn. C. C. 172.

Companies for the supply of electric light to consumers are not authorized under eleventh division of this class. *Scranton Electric Light Co.'s App.*, 122 Penn. St. 154.

Incorporation of company to engage in business of supplying natural gas to consumers, not authorized by this act. This act contemplates only companies supplying the manufactured product. *Emerson v. Commonwealth*, 108 Penn. St. 111; s. c., 15 W. N. C. 425.]

§ 3. The carrying on of any mechanical, mining, quarrying or manufacturing business, including all of the purposes covered by the provisions of the acts of the general assembly, entitled "An act to encourage manufacturing operations in this commonwealth," approved April 7, 1849, entitled "An act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevators, storage-house and storage yard companies, and also including companies for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom, the construction of dams in any stream, and the driving and floating of saw logs, lumber and timber on and over any stream not exceeding thirty-five miles in length, and the heads of all streams not exceeding thirty-five miles in length from their source, by the usual methods of driving and floating logs, timber and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats, and also including the manufacture and brewing of malt liquors, but excluding the distilling and manufacture of spirituous liquors.

(1893, June 10; P. L. 412, § 1.)

See Const., art. XVI, § 6; Iron and Steel Manufacturing Companies, §§ 1 et seq.; Manufacturing Companies, §§ 1 et seq.

§ 4. In addition to the corporations for profit of the second class, authorized to be created by the second section of an act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, corporations may be created for the construction and operation of motors and cables, and the necessary apparatus and mechanical fixtures for applying and operating the same, and said corporations may, in the manner provided in said act, increase their capital stock to an amount not exceeding the amount authorized therein, for mining and manufacturing companies, and such corporation shall have the power to enter upon any street in which a passenger railway now is or hereafter may be constructed, with the consent of said passenger railway, and may construct, maintain and operate thereon such motors, cables and necessary or convenient apparatus and mechanical fixtures, as will provide for the traction of the cars of said railway company;

Provided, That in such construction it shall be subject to such reasonable regulations for the protection and convenience of public travel on said streets, as shall be ordained by the councils of the borough, town or city in which the same may be located; said corporation shall also have power to receive and hold such real estate as may be necessary for its purposes, and such personal estate as may be acquired by it in the prosecution of its business, and to enter into contracts with passenger railway companies to construct, maintain and operate motors, cables and other appliances for the traction of their cars, and to demand and receive, as security therefor, mortgages by said companies of their railways and franchises, which mortgages the latter are hereby authorized to execute and deliver.

(1883, June 13; P. L. 122, § 6.)

See Const., art. XVI, § 6.

§ 5. The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same.

(1874, April 29; P. L. 73, § 25.)

II. MODE OF INCORPORATION.

§ 6. The charter of an intended corporation must be subscribed by five or more persons, three of whom at least must be citizens of this commonwealth, and shall set forth:

Contents of Certificate.

- I. The name of the corporation.
- II. The purpose for which it is formed.
- III. The place or places where its business is to be transacted.
- IV. The term for which it is to exist.
- V. The names and residence of the subscribers and the number of shares subscribed by each.
- VI. The number of its directors and the names and residences of those who are chosen directors for the first year.
- VII. The amount of its capital stock, if any, and the number and par value of shares into which it is divided.

Notice to be Given.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the

proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor.

Certificates for First Class.

The said certificates of incorporation of the first class shall be acknowledged by at least three of those who subscribe to them before the recorder of deeds of the county in which the business of the corporation is to be transacted to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class specified in the foregoing section, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order, the subscribers thereto and their associates shall be a corporation for the purposes and upon the terms therein stated, and the said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given.

Certificates for Second Class.

The certificate for a corporation embraced within the second class, named in the foregoing section, shall set forth all that is hereinbefore required to be set forth, and, except building and loan associations, shall also state that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation, and the name and residence of such treasurer shall be therein given. The same shall be acknowledged by at least three of the subscribers thereto, before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and they shall also make and subscribe an oath or affirmation before him, to be endorsed on the said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named in the second class, specified in the foregoing section, he shall approve thereof and endorse his approval

Mode of incorporation — Gen. Laws, §§ 7-9.

thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen, and the said certificate shall be recorded in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor-general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation. The said original certificate, with all of its endorsements, shall then be recorded in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation, for the purposes and upon the terms named in the said charter. Certified copies of both the records thereof and of the charters of the corporations named in the first class specified in the foregoing section shall be competent evidence for all purposes in the courts of this commonwealth. The secretary of the commonwealth shall charge and receive a fee of five dollars upon every paper relating to a corporation filed or recorded in his office.

(1874, April 29; P. L. 73, § 3.)

Unused charters void. Const., art. XVI, § 1. Subject to amendment. Id., art. XVI, § 10; see §§ 7 et seq., post. Classification made by charter, valid. § 21, post. Amendment of charters. §§ 73-79, post. Dissolution of corporation. §§ 95-99, post. New corporation to file certificate. § 101, post. Charters validated. § 105, post. Corporation violating charter, to be proceeded against. § 107, post. Charters subject to power of legislation. § 108, post. Forfeiture of charters. § 126, post. Foreign corporation to file certificate. See Foreign Corporations, § 5. Place of business may be changed. § 18, post. Corporations whose charters have expired. See Manufacturing Corporations, § 14. List of charters to be published. § 150, post.

[The requirement that three of the subscribers to the charter of an intended corporation shall be citizens of this State does not affect the right of other than citizens to become shareholders after the company has been duly chartered. Commonwealth v. Detwiller, 131 Penn. St. 614; s. c., 18 Atl. Rep. 990.]

Petition for a charter should set forth nothing except what is prescribed by the act of assembly; court will not approve a charter containing matter which is properly the subject of by-laws. In re Charter, 1 Del. Co. R. 415; In re Charter, 14 Phil. 130. Such charter should be written on a single piece of paper. Id.

An application for a charter should contain a reference to the division or divisions of the section under which incorporation is sought. A charter which specifies a particular purpose, which is not fully embraced in the general purposes stated in the Corporation Act will be refused. Pennsylvania Assn., 1 D. R. 763.

A title which may lead to a confusion with title of existing corporation will not be approved. In re Waverly, 1 D. R. 605.

Two purposes may be combined when they are kindred and cognate; but the application should

be definite and express singleness of purpose. In re Newton, 10 Penn. C. C. 452.

As to what application for charter should contain: see Mutual Assn., 10 Phil. 380.

An application for the incorporation of a water company, which fails to state where the company will be located, or into what town, borough, city or district it proposes to introduce water, does not meet requirements of act. In re Perkinson, 2 D. R. 466.

The personnel of the board of directors, during first year of a corporation's existence, is not restricted to the individuals named in the certificate by the provision that a certificate of incorporation must set forth the number of directors, etc. Commonwealth v. Hellus, 8 Penn. C. C. 410.

The executive department is required under this section to grant a charter if the application is in proper legal form, and the law has in all respects been observed. Extraneous matters cannot be considered. In re Bridge Co., 30 W. N. C. 200; Suburban Co. v. Lansdowne, 3 D. R. 597.

Charter will not be refused because the advertising notice contained more than law would permit in the charter, provided it stated enough to constitute a notice of the object proposed. Sowego Water Co., 36 W. N. C. 148.

Upon an application for a charter, a statement of the purpose should be in general terms. McClurg Gas Construction Co., 4 Penn. Dist. Rep. 349.

Upon an application to the governor for a charter, a disputed question of fact must be removed to the courts. Water Co. v. So. Side Co., 15 Penn. C. C. 603; s. c., 36 W. N. C. 55.

Failure to record the certificate of incorporation "in the office for the recording of deeds in and for the county where the chief operations are to be carried on," as required by Act of April 29, 1874, will render the incorporators personally liable to persons who deal with them without knowledge of the incorporation. Guckert v. Hoebe, 159 Penn. St. 303; s. c., 28 Atl. Rep. 249.

Failure to record a certificate of incorporation, as required by statute, makes the incorporators liable as partners to persons dealing without knowledge of the incorporation. N. Y. Nat. Exchange Bank v. Crowell, 35 Atl. Rep. 613.]

§ 7. From and after the passage hereof, all certificates of association or articles of incorporation may be acknowledged and sworn to before a notary public of the commonwealth of Pennsylvania, in the same manner, and with like force and effect, as though acknowledged and sworn to before the recorder of deeds of the proper county.

(1891, April 15; P. L. 18, § 1.)

§ 8. It shall be lawful to insert in any charter or amendment of a charter for a corporation of the first class, under the "Corporation Act of 1874," and its supplements, a provision or provisions that the directors, managers, trustees, vestrymen or other governing body, as the case may be, of such corporation, may be elected so that a half, or third, or fourth, of the whole number only, shall be elected each year, the distribution to be made in such manner as the charter may direct.

(1887, May 23; P. L. 165, § 1.)

Directors may be divided into classes. § 20, post.

§ 9. In all cases in which heretofore such provisions have been introduced into any charter for a corporation of the first class, or in any amendment of a charter of any

such corporation, either antedating the said act of 1874 or otherwise, and has been approved by the proper court and duly recorded, said provision of said charter or amendment is hereby ratified and confirmed. (1887, May 23; P. L. 165, § 2.)

Amendment to charters. §§ 73 et seq., post. Charters validated. § 105, post.

§ 10. No corporation of the second class shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and treasurer of the same, registered in the office of the auditor-general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor-general and State treasurer as taxes on capital stock are settled and collected. Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the secretary of the commonwealth a certificate of a single corporation, or a joint certificate if two or more corporations incorporated for and doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the Constitution and of this act, duly authorized by a meeting of stockholders called for that purpose; and upon such acceptance and approval by the governor, he shall issue letters-patent to said corporation, or if two or more corporations, to said corporations as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount of capital, number of shares and par value thereof, as shall be designated by said corporation or corporations in said certificate: Provided, That where two or more corporations shall make a joint certificate as aforesaid, and letters-patent shall be issued to said new corporation, said corporation shall thenceforth be deemed, held and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act.

(1876, April 17; P. L. 30, § 6.)

See § 11. Amendments and consolidation. §§ 75-77, post. Resolution of acceptance to be recorded. § 121, post. Foreign corporation to file statement. See Foreign Corporations, § 2.

[Corporations accepting the provisions of the General Corporation Act, under this section, are

controlled entirely by such provisions; and all powers and rights conferred upon them by prior act are non-operative. *Wallace v. Lehigh*, 1 North. Co. R. 117.]

§ 11. Hereafter no institution or company, incorporated or organized by or under any law of this commonwealth, general or special, or incorporated or organized under the laws of any other State and doing business in this commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the act of assembly or authority under which incorporated or organized, the place of business, the post-office address, and names of the president, secretary and treasurer, the amount of capital authorized by its charter, and the amount of capital paid into the treasury of the company, registered in the office of the auditor-general; and every institution or company now engaged in business in this commonwealth shall, within ninety days after the passage of this act, register as herein required in the office of the auditor-general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor-general and State treasurer, in the same manner as taxes on stock are settled and collected.

(1879, June 7; P. L. 112, § 1.)

See § 10, ante, and cross-references. Corporations to be registered. See Taxation, § 1.

§ 12. Corporations created by or under the laws of this State, embraced within either of the classes named in section two of this act, the charters whereof are about to expire by lapse of time from their own limitation, may be rechartered, or the charters thereof renewed, under the provisions of this act, by preparing, having approved and recorded the certificate named in said section for the class of corporation of which the same is one, in addition to the requirements provided in this act for a new corporation; the certificate for a recharter shall state the fact that it is a renewal of the former charter, naming the corporation and the date of its first charter. It shall also be accompanied with a certificate, under the seal of the corporation, showing the consent of at least a majority in interest of such corporation to such recharter. It shall also state the financial condition of the said corporation at the date of such certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any. It shall expressly accept the provisions of the Constitution of this State and of this act, and expressly surrender all privileges conferred upon such

Incorporation; by-laws and management — Gen. Laws, §§ 13-17.

corporation by its original charter that are not enjoyed by corporations of its class under this act or general laws of this commonwealth. From the date of recording of such certificate, if the corporation be of the first class named in section two of this act, and from the date of letters patent, if of the second class, the said rechartered corporation shall be and exist as a new corporation under the provisions of this act and of its said renewed charter; and all of the rights, privileges, powers, immunities, lands, property and assets, of whatever kind or character the same may be, possessed and owned by the said original corporation, shall vest in and be owned and enjoyed by the said rechartered corporation, as fully and with like effect as if its original charter had not expired, save as herein and by said certificate expressly stated otherwise; and all suits, claims and demands by said corporations in existence at the date of such recharter, shall and may be sued, prosecuted and collected, under the laws governing the said corporation prior to its recharter, and all claims and demands of every nature and character in existence at said recharter, may be collected from and of the said rechartered corporation, as fully and with like effect as if no change had taken place.

(1874, April 29; P. L. 73, § 40.)

See § 6, ante. Charters may be perpetual or limited. § 14, post.

§ 13. Upon the application of the president and secretary of any corporation heretofore or hereafter created under any general or special law of this commonwealth, accompanied by due proof that said corporation has complied with all the conditions provided by law and the Constitution to enable it to have a corporate existence and transact business, it shall be lawful for the governor to issue letters patent under the great seal of the commonwealth, in such form as he may prescribe, to such corporation, declaring it to be and erecting it into a body corporate or politic in deed and in law.

(1874, May 15; P. L. 186, § 1.)

Letters patent on amendment. § 75, post.

§ 14. The charters for incorporations named in this act may be made perpetual, or may be limited in time by their own provisions; and the general assembly reserves the power to revoke or annul any charter of incorporation granted or accepted under the provisions of this act, whenever in the opinion of the said general assembly it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporations or their successors.

(1874, April 29; P. L. 73, § 4.)

See Const., art. XVI, § 2. Charter. § 6, ante.

§ 15. It shall be the duty of the court in granting a charter of incorporation for any purpose, to limit the yearly income of such corporation, other than from real estate, to such sum as in the opinion of the court will not be injurious or prejudicial to the community.

(1854, February 20; P. L. 90, § 3.)

Taxation of gross receipts. See Taxation, § 10.

III. BY-LAWS AND MANAGEMENT OF CORPORATIONS.

§ 16. The by-laws of every corporation created under the provisions of this statute, or accepting the same, shall be deemed and taken to be its law, subordinate to this statute, the charter of the same, the Constitution and laws of this commonwealth and the Constitution of the United States. They shall be made by the stockholders or members of the corporation at a general meeting called for that purpose, unless the charter prescribes another body or a different mode. They shall prescribe the time and place of meeting of the corporation, the powers and duties of its officials, and such other matters as may be pertinent and necessary for the business to be transacted, and may contain penalties for the breach thereof, not exceeding twenty dollars.

(1891, May 14; P. L. 61, § 1.)

See §§ 17 et seq., post. By-laws may determine what constitutes quorum. § 25, post.

[A by-law is ultra vires and void where it is clearly alien to the nature of the corporation, and is a departure from the purpose set out in the charter. *Crumpton v. Pittsburgh*, 1 Penn. Sup. Ct. R. 614.]

§ 17. The business of every corporation created hereunder, or accepting the same, shall be managed and conducted by a president, a board of directors or trustees, a secretary or clerk, a treasurer, and such other officers, agents and factors as the corporation authorizes for that purpose, and nothing in any law contained shall prevent or be construed to prohibit the vice-president, treasurer, solicitor, or other officer of any corporation organized or existing under this act, from being a director of such company and receiving at the same time such compensation for his services as such officer as the board of directors of such company may direct. The directors or trustees shall be chosen annually by the stockholders or members, at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice, and of the choice or appointment of all other agents and officers of the company shall be prescribed by the by-laws. The number of directors or trustees shall not be less than three; one of them shall be chosen president by the directors, or by the members of the corpora-

tion, as the by-laws shall direct. The members of said corporation may, at a meeting to be called for that purpose, determine, fix or change the number of directors or trustees that shall thereafter govern its affairs, and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The secretary or clerk shall be sworn, and shall record all the votes of the corporation and the minutes of its transactions in a book to be kept for that purpose. The treasurer shall give bond in such sum, and with such sureties, as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate book account to his credit as treasurer, and if he shall neglect or refuse so to do, he shall be liable to a penalty of fifty dollars for every day he shall fail to do so, to be recovered at the suit of any informer in an action of debt.

(1891, May 14; P. L. 61, § 1.)

See §§ 18 et seq., post. Individual liability restricted. § 70, post. Election of officers. § 132, post. Officers, illegal contracts by, etc. See Crimes, §§ 138-140. Embezzlement of officers. *Id.*, § 236. Directors liable, when. See Manufacturing Companies, §§ 5-6. Directors may be divided into classes. § 8, ante; § 20, post. Salaried officers as directors. § 27, post. Corporate elections. §§ 30 et seq., post. Treasurer to keep separate bank account. See Manufacturing Companies, § 15. Directors to keep list of stockholders. *Id.*, § 16.

[Where stockholders in annual meeting elect on the first ballot only four out of seven directors, a new election for the full number of seven directors is not lawful; as soon as any stockholder receives the necessary number of votes, he was elected director, and the voting thereafter should have been confined to the vacancies only. *Forsyth v. Brown*, 2 D. R. 765. When the ballot has been counted and announced, it should not be reopened to receive the votes of any who failed to vote at the proper time. *Id.* A court of equity will supply a remedy by ordering an election, where the stockholders fail to elect a full number of directors. *Id.*

Directors of a corporation need not be stockholders or subscribers to the certificate of incorporation. In re Corporate Directors, 7 Penn. C. C. 178.

Action lies upon coupons signed by vice-president, although the mortgage accompanying the bonds should be signed by the president. *Tube Co. v. Iron Car Co.*, 161 Penn. St. 391; s. c., 28 Atl. Rep. 1119.

Stockholder or officer not forbidden to advance money to his company if the contract be not tainted with fraud. *Griffen v. Burden*, 10 Montgomery Co. Rep. 184.

Where corporation has made an assignment for creditors, and officer thereof has performed or has been ready to perform the duties of his office, he is entitled to compensation for the unexpired portion of his term, during which the company's property was in the hands of the assignee. *Potts v. Rose Mills*, 167 Penn. St. 310; s. c., 31 Atl. Rep. 655; reversing s. c., 5 Del. Co. R. 491.

Acts of officers de facto of a corporation are valid only where such acts are for benefit of strangers or the public, who are presumed to be ignorant of the defects in their title; such acts not valid when they are for the benefit of such officers themselves. *Shellenberger v. Patterson*, 168 Penn. St. 30; s. c., 31 Atl. Rep. 943.

Where directors of trading company, organized under the Act of July 18, 1863, neglect to deposit with the recorder of deeds, annually, in September, a certificate under oath, stating amount of capital stock paid in, names and number of shares held by each stockholder, amount individually in real estate and personal property, amount of property owned and debts due corporation, the first day of the previous August, and amount as nearly as can be ascertained of existing demands, such directors become liable for all debts of the corporation contracted during continuance of such neglect. *Kurtz v. Wigton*, 34 W. N. C. 219.

Treasurer of corporation has no authority to sign or indorse a promissory note unless expressly authorized by the laws or by the directors or stockholders. *Millward-Clift Company's Estate*, 161 Penn. St. 157; s. c., 28 Atl. Rep. 162. Note signed by treasurer after countersigned by president, as required by by-laws, not binding upon company, if company has received no benefit. *Id.*

Where secretary of a corporation is elected for a year, the insolvency of the corporation does not end its obligation to pay his salary. *Hassensius v. Packing Co.*, 15 Penn. C. C. R. 650.

While the same person may legally and properly act as director in two corporations, even when such corporations are dealing with each other, the action of such person should be open and free from any suspicion of secret dealing in favor of one principal while acting as representative of the other. *Library Hall v. Assn.*, 173 Penn. St. 30; s. c., 33 Atl. Rep. 744.

A lease by a corporation which surrenders the control of all company's property, and practically winds up its existence, cannot be authorized by the directors, but only by the stockholders. *Id.*

Promissory notes signed by de facto officers of a corporation are binding upon the corporation. *Wanner v. Church*, 174 Penn. St. 466; s. c., 34 Atl. Rep. 188.

Liability imposed by laws of Kansas upon stockholders of corporations for an additional amount, equal to stock owned by them, is contractual in character, and may be enforced outside of the limits of the State of Kansas. *Cushing v. Perot*, 175 Penn. St. 66; s. c., 34 Atl. Rep. 759.

Declarations of president outside of the line of duty held not to bind the corporation. *Invest. Co. v. Eldridge*, 145 Penn. St. 287; s. c., 34 Atl. Rep. 629.

A director of a corporation held estopped as a stockholder to question the title of other directors to their offices. *Hall v. West Chester Pub. Co.*, 37 Atl. Rep. 106.

A note of a corporation, authorized by its directors, is not invalid because of informality in the election of the directors, where they comprise all the stockholders. *Id.*

Injunction restraining the issuance of stock by a de facto but illegal board of directors held proper. *Morris v. Stevens*, 36 Atl. Rep. 151.

Settlement of a claim against the company by directors held binding on stockholders unless the act was fraudulent as to the corporation. *Chambers v. Glass Co.*, 39 Atl. Rep. 822.

Rule on accounting by president of corporation determined. *Danville, etc., R. Co. v. Kase*, 39 Atl. Rep. 361.

Money paid to an officer on a resolution to recompense him for past services is without consideration. *Id.*

§ 18. It shall be lawful for any corporation of this State, now existing or hereafter created, to change the location of its principal office, the place of its annual and other meetings of stockholders, or the time for holding such annual meetings, or either, or all, by resolution of its board of directors, adopted by a two-thirds vote thereof, approved at any annual meeting or special meeting duly called of the stockholders, by a two-thirds vote thereof. Upon such approval of the stockholders, it shall be the

Directors; meetings; election, etc.—Gen. Laws, §§ 19-24.

duty of the president of such corporation to file in both the offices of the secretary of the commonwealth and the auditor-general of this commonwealth a report, under the seal of the company, specifying the change or changes so made. Nothing in this act, however, shall authorize the location of the principal office or the holding of the annual or other meetings of stockholders outside of the limits of this commonwealth.

(1893, June 8; P. L. 355, § 1.)

Charter to state place of business and time of meeting. § 6, ante; see §§ 19-24, post. Foreign corporation, office of. See Foreign Corporations, § 1.

[In absence of a by-law or a custom to the contrary at least one full day's notice should be given of a directors' meeting. *Liberty Bell v. Assn.*, 173 Penn. St. 30; 8, c., 33 Atl. Rep. 744.]

§ 19. It shall be competent for the trustees, directors or managers of any corporation heretofore or hereafter established by the laws of this commonwealth, or for the stockholders therein, at their general meetings, to alter the times and places fixed by law for the meeting of said trustees, managers, directors or stockholders, full notice of such intended alteration having been given at a previous meeting of said trustees, directors, managers or stockholders; Provided, That no such alteration shall be made in the time of meeting of said trustees, managers or directors, but with the consent of two-thirds of their number, or in the time of meeting of the said stockholders, but with the consent of two-thirds of their number, convened at a general meeting.

(1830, February 6; P. L. 42, § 2.)

See § 18, ante. Meetings outside State. § 24, post.

§ 20. Whenever the stockholders of any corporation incorporated under the act of April 29, 1874, or any other law of this commonwealth, shall, at a meeting called for the purpose, decide, by a majority vote of those present either in person or by proxy, to elect a portion of their directors for a term or terms longer than one year, it may and shall be lawful for such corporation, at the next ensuing election, to divide the directors or managers, which are to be chosen, into two, three or four classes, and to elect the first class to serve for the term of one year, and the second, third or fourth to serve for two, three or four years, respectively, and at all ensuing elections of said corporations, the stockholders shall only elect the number of directors necessary to take the place of those whose term of office shall then expire, and such directors shall be elected for the longest term for which any class may have been elected as hereinbefore provided.

(1887, June 17; P. L. 411, § 1.)

See § 8, ante.

§ 21. Such classification, where already made by charter, is hereby declared valid. (1887, June 17; P. L. 411, § 2.)

See §§ 8 and 20, ante.

§ 22. It shall be lawful, from and after the passage of this act, for any corporation, chartered or existing by or under any law of this State, to determine, by the vote of its stockholders, holding a majority in interest of all its stock, at a meeting duly called for the purpose, the time of holding the annual meeting for the election of officers of the corporation, and the number of directors that shall thereafter govern its affairs: Provided, That the number of directors so determined shall not be less than three nor more than fifteen, and that at least one-third of the directors of every corporation shall be and remain, during their term of service, residents of the State of Pennsylvania: And provided further, That this act shall not apply to any company heretofore incorporated, unless such company shall file, in the office of the secretary of the commonwealth, a certificate of the acceptance of this act, and also of the provisions of the Constitution of this commonwealth, which acceptance shall be made by resolution, adopted at a regular or called meeting of the directors, trustees or other proper officer of such corporation, certified under the seal of the corporation, and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

(1887, May 31; P. L. 281, § 1.)

See § 17, ante. Annual elections, where held. § 24, post. Increase of directors. § 26, post. Election of. § 132, post.

§ 23. In case of the death, removal or resignation of the president or any of the directors, treasurer, or other officer of any such company, the remaining directors may supply the vacancy thus created until the next election.

(1874, April 29; P. L. 73, § 9.)

See § 17, ante.

§ 24. In all cases where any company has been incorporated under the laws of this State, and a majority of the directors, corporators, or stockholders thereof are citizens of any other State, said corporation may be organized, and all the meetings of such corporators, directors, or stockholders, held in such place, whether in this State or elsewhere, as such majority may, from time to time, appoint: Provided however, That the annual election, for officers of such corporation, shall be held in the State of Pennsylvania, at such time and place, and upon such notice, by publication, in the newspapers of this State, as the by-laws of such

Contracts for supplies; elections — Gen. Laws, §§ 25–30.

corporation may, from time to time, determine.

(1865, November 27; P. L. (1866) 1228, § 1.)

See § 18, ante.

§ 25. Every such corporation may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum; if the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

(1874, April 29; P. L. 73, § 6.)

By-laws. § 16, ante. Majority to constitute quorum. § 26, post.

§ 26. Whenever the number of directors or managers of any corporation may be increased under authority of law, a majority of the whole number shall be necessary to constitute a quorum; and all laws inconsistent with this act be and the same are hereby repealed.

(1869, April 15; P. L. 29, § 1.)

Stockholders to fix number of directors. § 22, ante. Quorum. § 25, ante.

§ 27. It shall be lawful for any vice-president, treasurer, or other salaried officer of any trust, deposit or other purely private or business corporation, to hereafter serve, or to have heretofore concurrently served such corporation as a director thereof, when lawfully elected to said position.

(1891, May 20; P. L. 101, § 1.)

See § 17, ante.

§ 28. It shall not be lawful for any councilman, burgess, trustee, manager or director of any corporation, municipality, or public institution to be at the same time a treasurer, secretary or other officer, subordinate to the president and directors, who shall receive a salary therefrom, or be the surety of such officer; nor shall any member of any corporation or public institution, or any officer or agent thereof, be in anywise interested in any contract for the sale or furnishing of any supplies or materials to be furnished to or for the use of any corporation, municipality or public institution of which he shall be a member or officer, or for which he shall be an agent, nor directly nor indirectly interested therein, nor receive any reward or gratuity from any person interested in such contract or sale; and any person violating these provisions, or either of them, shall forfeit his membership in such corporation, municipality or institution, and his office or appointment thereunder, and shall be held guilty of a misdemeanor, and

on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars: Provided, That nothing in this section contained shall prevent a vice-president of any bank from being a director of such bank, or of receiving a salary as vice-president.

(1860, March 31; P. L. 382, § 66.)

See § 17, ante.

§ 29. Any person who shall contract for the sale, or sell any supplies or materials as aforesaid, and shall cause to be interested in any such contract or sale, any member, officer or agent of any corporation, municipality or institution, or give or offer to give any such person any reward or gratuity, to influence him or them in the discharge of their official duties, shall not be capable of recovering anything upon any contract or sale, in relation to which he may have so practiced, or attempted to practice corruptly, but the same shall be void, and such parties shall be guilty of a misdemeanor and on conviction thereof be sentenced to pay a fine of not exceeding five hundred dollars.

(1860, March 31; P. L. 382, § 66.)

IV. CORPORATE ELECTIONS.

§ 30. No person acting as judge or officer holding an election for any such corporation, shall enter on the duties of his office or appointment until he take and subscribe an oath or affirmation before a judge, alderman, justice of the peace, or other person qualified by law to administer oaths, that he will discharge the duties of his office or appointment with fidelity, that he will not receive any vote but such as he verily believes to be legal; and if any such judge or officer shall knowingly and wilfully, violate his oath or affirmation, he shall be subject to all the penalties imposed by law upon the officers of the general election of this commonwealth violating their duties, and shall be proceeded against in like manner, and with like effect; and if any election, as aforesaid, be held without the person holding the same having first taken an oath or affirmation, as aforesaid, or be invalid for any other reason, such election shall be set aside in the manner now provided by law, and a new election ordered by the court of common pleas of the proper county upon the petition of not less than five stockholders supported by proof satisfactory to said court.

(1874, April 29; P. L. 73, § 8.)

Charter may provide for election of officers. § 8, ante. Time of annual election. § 22, ante. Election in regard to increase of stock. §§ 47, 54, post. Same as to reduction. § 62, post.

[Bill in equity does not lie to compel surrender of property of a corporation where it appears that real question in controversy is the validity

Corporate elections — Gen. Laws, §§ 31-35.

of election of defendants as corporate officers; in such case quo warranto is the proper remedy. *Bedford Co. v. McMeen*, 161 Penn. St. 639; s. c., 29 Atl. Rep. 99.

Court of equity will supervise and control corporate elections, when. *Jenkins v. Baxter*, 160 Penn. St. 199; s. c., 28 Atl. Rep. 682.

Where no other means is provided for filling vacancies in a board of directors, a court of equity has jurisdiction to order an election to fill such vacancy. *Forsyth v. Brown*, 33 W. N. C. 72.

Corporate election will not be postponed by the court for inadequate reasons, neither will court appoint a master to conduct the election where there is no necessity for it. *Commonwealth v. R. R. Co.*, 3 Penn. Dist. Rep. 115.

Where reputable men had been appointed to conduct an election, court refused to appoint master to conduct such election, where no reason appeared in the petition. *Dick v. R. R. Co.*, 4 Penn. Dist. Rep. 56.]

§ 31. In all elections for directors, managers or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stockholder or other person having a right to vote, may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer; that is to say: If the said member or stockholder or other person having a right to vote, own one share of stock or has one vote, or is entitled to one vote for each of six directors by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section.

(1876, April 25; P. L. 47, § 1.)

See Const., art. XVI, § 4. Officers. § 17, ante. Provisions as to proxies not to apply, when. § 37, post.

[In a corporate election, votes cannot be added to the ballots so as to change the result after the ballot has been closed, counted and announced. *Forsyth v. Brown*, 33 W. N. C. 72.]

§ 32. The certificate of stock and transfer-books, or either, of any corporation of this commonwealth, shall be prima facie evidence of the right of the person named therein to vote thereon as the owner, either personally or by due proxy. If however objection is taken by an actual stockholder at the time the ballot is tendered, accompanied by a written statement under oath that the person in whose name such stock stands on such certificate, or transfer-books, and who is offering to vote thereon either in person or by proxy, is not the owner thereof, either in his own right or as active trustee with the character of his trusteeship disclosed on the face of said certificate, or

transfer-books, in connection with his name, it shall be the duty of the judges of election to inquire and determine summarily whether the facts are as represented in such statement, and if so, the vote or votes so tendered shall be rejected: Provided however, That nothing in this section shall be held to prohibit executors, administrators, guardians or trustees created by last will and testament, or by decree of court, from voting on stock standing in the name of a decedent, minor or other beneficiary.

(1893, May 26; P. L. 141, § 1.)

See §§ 33 et seq., post. Certificates of stock. § 39, post. Proxies. § 48, post. Same. § 55, post. Same. § 63, post. Stockholders not to vote, when. § 38, post.

[While, upon objection being made in the manner provided by the act, it becomes the duty of the judge of election to make inquiry, yet he is not entitled to exclude the votes of a stockholder, who appears from the corporation books to be duly qualified, upon the mere affidavit of the objector. *Commonwealth v. Dalzell*, 152 Penn. St. 217; s. c., 31 W. N. C. 391; s. c., 25 Atl. Rep. 535. The certificate of stock and transfer-books are conclusive evidence of the right to vote in the absence of testimony to the contrary; right to vote follows the legal title to the stock, and a trustee must, therefore, be permitted to vote in absence of proof rebutting the presumption in his favor. *Id.*]

§ 33. In cases where, under the terms of the preceding section, the person named in the certificate, or transfer-books, is not permitted to vote, the beneficial owner of such stock shall have the right to vote thereon upon furnishing to the judges of election satisfactory evidence of ownership.

(1893, May 26; P. L. 141, § 2.)

§ 34. As between the pledgor and the pledgee of capital stock pledged to secure a specific loan with a fixed period or periods of maturity, the right to vote shall be determined as follows: First. By the written agreement of the pledgor and pledgee. Second. In all other instances the pledgor shall be held to be the owner and entitled to the right to vote.

(1893, May 26; P. L. 141, § 3.)

See § 32, ante, and cross-references.

§ 35. From and after the passing of this act, all power to vote by proxy in any association incorporated by any authority in this commonwealth, or by the former proprietary government, shall be obtained and dated within six months previously to the time of holding the election or meeting of stockholders at which such proxy shall be presented, and shall not be used for any purpose or purposes except those therein expressed, nor shall any such proxy be given in blank nor substitution thereof to a third person be admitted, any law or usage to the contrary notwithstanding: And provided also, That nothing herein contained shall

be so construed as to alter or effect the provisions of the act entitled "An act regulating banks," so far as relates to the dates of proxies.

(1820, March 28; 7 Sm. L. 320, § 1.)

See § 32, ante, and cross-references. Person voting as proxy to make oath. § 36, post.

[A proxy may vote at a corporate election, upon a motion to take an appeal or to adjourn. *Forsyth v. Brown*, 13 Penn. C. C. Rep. 576; 33 W. N. C. 72.]

§ 36. In all elections of officers in any association or company (incorporated as aforesaid) hereafter to be held by virtue of any law of this commonwealth, whenever any person shall offer to the judges of such election any vote or votes as attorney, proxy or agent for any other person, such person being required thereto by any judge of such election, or any stockholder in such association or company, shall, before his vote or votes shall be received, take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I have no interest directly or indirectly in the share upon which I shall vote at this election, that those shares are to the best of my knowledge and belief truly and in good faith owned by the persons in whose names they now stand, and that in voting at this election I have not transferred any of the said shares, or caused them to be transferred in trust or otherwise for the purpose of increasing the votes at this election, and that I shall not violate in any manner directly or indirectly any provision of the act of incorporation which limits the number of votes a stockholder may give in his own right; and the judges of such election are authorized to administer the aforesaid oath (or affirmation) and the said oath and also all authorities or powers of attorney to vote by proxy, or as agent, shall be filed and preserved in the office of such association or company, and if any person shall wilfully and absolutely swear or affirm falsely, in taking any oath or affirmation prescribed by this act, such person so offending shall upon due conviction thereof be subject to the pains and penalties which are by law prescribed for the punishment of wilful and corrupt perjury.

(1820, March 28; 7 Sm. L. 320, § 2.)

See § 32, ante.

§ 37. None of the provisions of the act entitled "An act to regulate proxies," passed the twenty-eighth day of March, 1820, shall be deemed to extend to any association incorporated for religious, charitable or literary purposes.

(1821, March 31; 7 Sm. L. 446, § 1.)

See §§ 31-36, ante.

V. CAPITAL STOCK.

§ 38. The capital stock of every such corporation that has or requires a capital stock, shall consist of not more than one million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such instalments and at such times as the directors may require, and if default be made in any payment the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one-half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with the penalty of one-half of one per centum per month, as aforesaid, or the directors may cause the stock to be sold in the manner provided in clause two of section thirty-nine of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government.

(1874, April 29; P. L. 73, § 11.)

Right to vote. § 32, ante. Increase and reduction of capital stock. §§ 45-64. See Act No. 3, at p. 71. Capital stock, payment of assessments. See *Manufacturing Corporations*, §§ 1-3. Tax on capital stock. See *Taxation*, § 3. Purchaser of franchises may issue stock. §§ 103-104, post. See § 110, post. Act No. 4, at p. 71.

[No defense to an action by a foreign corporation to recover a subscription to its stock, that plaintiff is a corporation of another State, and that it is attempting to carry on business in this State without having filed a statement in office of secretary of commonwealth as required by act of June 9, 1881. *Iron Co. v. Vandervart*, 164 Penn. St. 572 S. C., 30 Atl. Rep. 491.]

In an action by a railroad company to enforce a subscription to stock, no defense that defendant was induced, by misrepresentations of co-subscriber, to sign his name to the articles of association without reading them for himself. *R. R. Co. v. Brinley*, 15 Penn. C. C. R. 339.

Where a person subscribes to unissued stock of a corporation and such subscription is accepted by the corporation and recognized by the stockholders and directors, the latter are estopped from asserting that the subscription is invalid because not made in writing and in the prescribed form. *Shellenberger v. Patterson*, 168 Penn. St. 303 S. C., 31 Atl. Rep. 943.

The act forbidding foreign corporations from holding real estate in this State does not prohibit them from holding the stock of Pennsylvania corporations holding real estate. *White v. Ryan*, 15 Penn. C. C. R. 170.

A stockholder who is secretary of corporation, and who has full and complete knowledge of the company's business, cannot, after delay of

Stock certificates; preferred stock — Gen. Laws, §§ 39-43.

a year and a half, and after the company has become insolvent, set up as a ground of claim against officers of company who sold his stock, that he was induced to buy it by fraudulent misrepresentations on their part. *Hilliard v. Allegheny Co.*, 143 Penn. St. 1; s. c., 34 Atl. Rep. 231.

A pledge of stock under power of attorney unauthorized by the power which was seen by the pledgee gives no lien. *In re Kern's Estate*, 35 Atl. Rep. 231.

A ratification of a fraudulent issue of stock held not shown by the evidence. *Morris v. Stevens*, 36 Atl. Rep. 151.

It is no defense to a subscription for railroad that a co-subscriber has waived a condition inserted in the subscription for his own benefit. *Phil. & D. C. R. Co. v. Conway*, 35 Atl. Rep. 716.

A conditional subscription to railroad stock, to become binding when a certain sum has been subscribed, cannot be revoked after the full amount has been subscribed.

An assignee of an insolvent corporation cannot maintain assumpsit against the incorporators to recover capital required by law to be paid in before incorporation, and fraudulently alleged by the incorporators in their application for incorporation to have been paid. *Patterson v. Franklin*, 35 Atl. Rep. 205.]

§ 39. The directors of such corporation shall procure certificate or evidences of stock, and shall deliver them signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her or them respectively held, which certificates or evidences of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, as the by-laws may prescribe, subject, however, to all payments due or to become due thereon; and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original subscriber or holder would have been, but no certificate shall be transferred so long as the holder thereof is indebted to said company, unless the board of directors shall consent thereto.

(1874, April 29; P. L. 73, § 7.)

City or town not to become stockholder. Const., art. IX, § 7. See Const., art. XVI, § 7. Right to vote. § 32, ante. Not transferable, when. § 44, post.

§ 40. Every corporation created under the provisions of this act, or accepting its provisions, may, with the consent of a majority in interest of its stockholders, obtain[ed] at a meeting to be called for that purpose, of which public notice shall be given during thirty days in a newspaper of the proper county, issue preferred stock of the corporation, the holders of which preferred stock shall be entitled to receive such dividends thereon as the board of directors of the corporation may prescribe, payable only out of the net earnings of the corporation.

(1874, April 29; P. L. 73, § 16.)

Fictitious increase of stock. Const., art. XVI, § 7. See §§ 41-43, post. Increase of capital stock. §§ 45 et seq., post.

§ 41. It shall be lawful for any company now or hereafter incorporated, by or under any general law of this commonwealth, to issue, with the consent of a majority in interest of its stockholders, preferred stock of the company, not exceeding at any time one-half of the capital stock of the corporation; the holders of which preferred stock shall be entitled to receive such dividends thereon, not exceeding twelve per cent. per annum, as the board of directors of said company may prescribe, payable out of the net earnings of the company; and the holders of said preferred stock shall not be liable for any debts of the company.

(1872, April 3; P. L. 37, § 1.)

Fictitious stock prohibited. Const., art. XVI, § 7.

[Directors have discretionary powers to determine the circumstances under which they will or may declare dividends, and they will not be compelled to declare any dividends on preferred stock where their discretion has been properly exercised. *McLean v. Glass Co.*, 159 Penn. St. 112; s. c., 28 Atl. Rep. 211.]

§ 42. Any company authorized by the act, to which this is a supplement, to issue preferred stock, may issue the same in different classes, to be distinguished in such manner as the directors of such company may prescribe; and they may give to the various classes such order of preference in the payment of the dividends, or in the rate of dividends thereon, or in the redemption of the principal thereof, as may be approved by the holders of a majority of the stock of the company; and the company shall have the right to redeem its preferred stock upon such terms as may be prescribed in the issue thereof; and it may specifically appropriate for the payment of the dividends upon any class of stock, or for the redemption of the principal thereof, the revenues from any specific department of its business or the proceeds of any specified portions of its assets or property: Provided, That no injustice shall thereby be done to the existing rights of other stockholders or creditors of the company.

(1873, April 28; P. L. 79, § 1.)

Fictitious stock prohibited. Const., art. XVI, § 7.

§ 43. Every corporation created under the provisions of this act or accepting its provisions, may take such real and personal estate, mineral rights, patent rights and other property, as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof, in payment thereof, and the stock so issued shall be declared and taken to be

full paid stock, and not liable to any further calls or assessments; and in the charter and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the fact; and the executors or administrators of any deceased tenant in common of lands, mines and mineral rights so proposed to be taken may, and they are hereby authorized to convey the individual estate and interest of such decedent therein to such company, receiving therefor so much stock in such company as the said decedent would have been entitled to receive in his lifetime, to be held in the same manner as the lands: Provided, That no directions or limitations contained in any last will and testament of such decedent shall be in any manner interfered with: And provided, That, before making such conveyance, such executors or administrators shall give sufficient security, to be approved by the orphans' court having jurisdiction of their accounts, for the faithful application of the stock received therefor; no such corporation shall issue either bonds or stock except for money, labor done or money or property actually received, and all fictitious increase of stock or indebtedness in any form shall be void; every such corporation may provide for the issue of deferred stock in payment for such real or personal estate or mineral rights, and, if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or, in the acceptance of this statute, to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payments of dividends thereon, until out of the net earnings at least five per centum has been declared and paid upon the other full paid stock of the corporation.

(1876, April 17; P. L. 30, § 4.)

Fictitious stock. Const., art. XVI, § 7.

[Corporations have both inherent and statutory power to make a contract to purchase property or labor and pay for it in stock instead of money. *Shannon v. Stevenson*, 175 Penn. St. 419; s. c., 34 Atl. Rep. 218.]

§ 44. (As amended June 26, 1895.) The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock.

It shall and may be lawful for any company, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business or for supply of water for manufacturing and supplying light, of this commonwealth or elsewhere to subscribe for, take, purchase, hold and dispose of the bonds or stock in any company of the same character incorporated under the provisions of this act or its supplements, or guarantee the payment of said bonds and the interest thereon, or either principal or interest, or to enter into contracts for the use or lease of the corporate property, real, personal or mixed of such company, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use and operate such property in accordance with such contract or lease.

Transfers. § 39, ante. Taxation on personal property. See Taxation, § 28. Power to hold stock in other corporations. See Iron and Steel Manufacturing Corporations, § 7. See § 129, post.

[See *Wright v. Pipe Line Co.*, 101 Penn. St. 204; 12 W. N. C. 325.

Transfer of stock on agreement among stockholders not to sell or transfer their stock without unanimous consent of all the persons signing the agreement is void as against public policy. *White v. Ryan*, 15 Penn. C. C. 170.

Stockholders will not be enjoined at the suit of other stockholders from selling or assigning their stock to a foreign corporation having the right to do business in this State. *Id.*

Where a right is given to the stockholders of one corporation to purchase the stock of another, the price brought by the sale of the subscription right is a profit incidental to the ownership of the stock of the first corporation, and is income and not principal. *Eisner Estate*, 175 Penn. St. 143; s. c., 34 Atl. Rep. 577.

Transfer of shares in a failing corporation, made by the transferor with the purpose of escaping his liability as a shareholder, to a person who is incapable of responding to such liability, is void as to creditors of the company and as to other shareholders. *Burt v. Becker*, 175 Penn. St. 619; s. c., 34 Atl. Rep. 923.]

VI. INCREASE OF CAPITAL STOCK AND INDEBTEDNESS.

§ 45. The capital stock or indebtedness of any corporation may be increased from time to time, by the consent of the person or bodies corporate holding the larger amount in value of the stock of such company, to such amount as such corporation is by law authorized to increase its capital stock or indebtedness: Provided, That no corporation shall increase the amount of its indebtedness beyond the amount of its capital stock subscribed, until the amount of its capital stock subscribed shall be fully paid in.

(1874, April 18; P. L. 61, § 1.)

See §§ 46-58, post. Fictitious increase of stock prohibited. Const., art. XVI, § 7. Preferred stock. §§ 40-43, ante. Reduction of capital stock. §§ 59-64, post. Amount of increase authorized. § 57, post.

[Above act does not apply to a corporation which was invested by its charter, before adop-

Increase of capital stock and indebtedness — Gen. Laws, §§ 46-50.

tion of Constitution of 1874, with power to increase its capital and indebtedness, and has not accepted the benefit of any legislation since that time. *Gloninger v. R. R. Co.*, 139 Penn. St. 13; s. c., 21 Atl. Rep. 211.

See *Lewis v. Jefferies*, 86 Penn. St. 340.]

§ 46. Any corporation desirous of increasing its capital stock or indebtedness, as provided by this act, shall, by resolution of its board of directors, call a meeting of its stockholders therefor; which meeting shall be held at its chief office or place of business in this commonwealth, and notice of the time, place and object of said meeting shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.

(1874, April 18; P. L. 61, § 2.)

See § 53, post. Meeting for reduction of stock. § 61, post.

[See *Shepp v. Ry. Co.*, 2 D. R. 679.]

§ 47. At the meeting called, pursuant to the second section of this act, an election of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election; and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such elections to the best of their ability; and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company.

(1874, April 18; P. L. 61, § 3.)

Judges to take oath. § 30, ante. See § 54, post. Election in regard to reduction. § 62, post.

§ 48. Each ballot shall have endorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote unless the same

shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

(1874, April 18; P. L. 61, § 4.)

See § 32, ante, and cross-references. Ballots, proxies, etc. § 55, post. Same. § 63, post.

§ 49. It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act, with a copy of the resolution and notice calling the same thereto annexed; and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such increase, and in case of neglect or omission so to do, such corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor-general and State treasurer, as accounts for taxes due the commonwealth are settled and collected; and the secretary of the commonwealth shall cause said return to be recorded in a book kept for that purpose and furnish a certified copy of the same to the auditor-general.

(1874, April 18; P. L. 61, § 5.)

See §§ 56, 64, post.

§ 50. Every corporation shall, within sixty days, when requested by the auditor-general, render to him a report under the oath of its president or treasurer, of the amount of capital stock or bond indebtedness issued pursuant to the provisions of this act, showing in case of stock to whom issued and the price or consideration received therefor, amount received, and from whom, in money, in labor and in other property; and if so requested, a detailed statement of the character, value and situation of the property so received; and in case of refusal or neglect so to do, shall be subject to a penalty of five thousand dollars for each and every thirty days thereafter such corporation shall refuse or neglect to make such report, which penalty or penalties shall be collected on an account or accounts settled from time to

Increase of capital stock and indebtedness — Gen. Laws, §§ 51-56.

time by the auditor-general and State treasurer, as accounts for taxes due the commonwealth are settled and collected.

(1874, April 18; P. L. 61, § 6.)

Annual report to auditor-general. See Taxation, § 2.

§ 51. Every company, except railroad, canal, turnpike, bridge or cemetery companies, and companies incorporated for literary, charitable or religious purposes, which shall increase its capital stock under the provisions of this act, shall pay to the State treasurer, for the use of the commonwealth, a bonus of one-quarter of one per centum upon the amount of said increase, in two instalments, the first to be due upon the filing of the certificate required by the preceding section of this act, to be filed in the office of the secretary of the commonwealth, and the second instalment one year thereafter: Provided, That nothing in this act shall be construed to reduce the amount of bonus to be paid by any company having in its charter a special provision requiring the payment of a bonus at a higher rate than one-quarter of one per centum.

(1874, April 18, P. L. 61, § 7.)

See § 58, post; Act of 1897, at p. 72.

§ 52. The capital stock or indebtedness of any corporation to be created under the provisions of this statute, or accepting its provisions, may be increased, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company, to such amount as such corporation is by this act authorized to increase its capital stock or indebtedness, but such increase shall only be made for money, labor done, or money or property actually received.

(1874, April 29; P. L. 73, § 18.)

See § 45, ante, and cross-references.

§ 53. Any such corporation desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this commonwealth; and notice of the time, place and object of said meeting, shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.

(1874, April 29; P. L. 73, § 19.)

See § 46, ante.

§ 54. At the meeting called, pursuant to the nineteenth section of this act, an elec-

tion of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such election to the best of their ability; and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase, or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company.

(1874, April 29; P. L. 73, § 20.)

See § 47, ante.

§ 55. Each ballot shall have endorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the person holding a proxy therefor; but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

(1874, April 29; P. L. 73, § 21.)

See § 32, ante, and cross-references. Ballots, proxies, etc. § 48, ante.

§ 56. It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the twentieth section of this act, with a copy of the resolution and notice calling same

Increase of capital stock; reduction — Gen. Laws, §§ 57-62.

thereto annexed; and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such increase and terms of the same, that is to say, the terms on which additional stock is issued; and in case of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor-general and State treasurer, as accounts for taxes due the commonwealth are settled and collected; and the secretary of the commonwealth shall cause said returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the auditor-general, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return as aforesaid.

(1874, April 29; P. L. 73, § 22.)

See § 49, ante.

§ 57. Any corporation created by special or general law shall, notwithstanding any limitation upon the amount of its capital stock by such special or general law, have authority, with the consent of the persons holding the larger amount in value of its stock, to increase its capital stock to accomplish [or] enlarge the objects and purposes of its incorporation to the amount of thirty million dollars in the aggregate; such increase may be made at once or from time to time as the stockholders aforesaid shall determine.

(1893, June 10; P. L. 417, § 1.)

See § 45, ante, and cross-references.

§ 58. From and after the passage of this act, any corporation heretofore or hereafter incorporated by or under any general or special law of this commonwealth, except railroad, canal, turnpike, bridge and cemetery companies, building and loan associations, agricultural societies and companies or associations incorporated for literary, charitable or religious purposes, upon increasing their capital stock, in pursuance of any general or special law, shall pay to the State treasurer, for the use of the commonwealth, a bonus of one-quarter of one per centum upon the amount of the authorized increase, in two equal annual [in] instalments; the first shall be due and payable upon the date of the authority to increase as aforesaid, and the second within one year thereafter. All laws or parts of laws inconsistent herewith are hereby repealed.

(1889, May 7; P. L. 115, § 1.)

See § 51, ante; Act of 1897, at p. 72.

[Bonus on increase of capital stock bears interest from date on which it falls due. *Commonwealth v. Mining Co.*, 16 Phil. 575.]

Payment of bonus under this act cannot be exacted from corporation chartered in 1865, by a special act of the legislature, which conferred unconditional "privilege of increasing its capital stock from time to time." *Commonwealth v. Western Co.*, 107 Penn. St. 112. Distinction between a bonus and a tax pointed out. Id.]

VII. REDUCTION OF CAPITAL STOCK.

§ 59. Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporations shall cease to exist, and the said property and franchises, not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid.

(1876, April 17; P. L. 30, § 5.)

Capital stock, preferred stock. §§ 38-44, ante. Increase of capital stock. §§ 45, 58, ante. Manner of reduction, etc. §§ 60-64, post. Sale of franchises and property. §§ 100-104, post. See §§ 114, 119, post. Power to sell must be given by stockholders. See *Manufacturing Companies*, § 12.

§ 60. The capital stock of any corporation may be reduced from time to time by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company. Provided, That such reductions shall not be below the amount of capital stock required by law for the formation of such company.

(1893, June 8; P. L. 351, § 1.)

§ 61. Any corporation desirous of reducing its capital stock as provided by this act shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held in its chief office or place of business in this commonwealth, and notice of the time, place and object of said meeting shall be published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.

(1893, June 8; P. L. 351, § 2.)

Meetings for increase. § 46, ante.

§ 62. At the meeting called pursuant to the second section of this act, an election of the

stockholders of such corporation shall be taken for or against such reduction, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such elections to the best of their ability, and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such reduction, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such reduction or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such reduction and the number that voted against such reduction, and subscribe and deliver the same to one of the chief officers of said company.

(1893, June 8; P. L. 351, § 3.)

Judges to take oath. § 30, ante. See § 47, ante.

§ 63. Each ballot shall have endorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been executed within three months next preceding such election or meeting, and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

(1893, June 8; P. L. 351, § 4.)

See § 32, ante, and cross-references. Ballots, proxies, etc. § 48, ante.

§ 64. It shall be the duty of such corporation, if consent is given to such reduction, to file in the office of the secretary of the commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act, with a copy of the resolution and notice calling the same thereto annexed, and upon the reduction of the capital stock of such corporation made pursuant thereto, it shall be the duty of the

president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such reduction, and in case of neglect or omission so to do, such corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor-general and State treasurer as accounts for taxes due the commonwealth are settled and collected, and the secretary of the commonwealth shall cause said return to be recorded in a book kept for that purpose, and furnish a certified copy of the same to the auditor-general.

(1893, June 8; P. L. 351, § 5.)

See § 49, ante.

VIII. POWER TO MORTGAGE.

§ 65. It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders, upon their real estate and machinery, or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding six per centum; Provided, That it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine and eleven of corporations for profit, of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the act of assembly approved April 17, 1876, so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations, or is contained in the charter of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed and managed.

(1889, May 21; P. L. 257, § 1.)

See §§ 66-67, post. Purchasers of franchises may issue bonds. §§ 103-104, post. Prima facie evidence of mortgage, etc. § 114, post. Mortgage not invalidated by informality. § 119, post. Issuance of bonds. See Iron and Steel Manufacturing companies, § 3. Counterfeiting bonds. See Crimes, §§ 114-115. See § 110, post.

Mortgages; liability of stockholders — Gen. Laws, §§ 66-71.

§ 66. Any corporation, which has heretofore been authorized by any special law to borrow money, is hereby authorized and empowered to borrow, for a period not exceeding thirty years, any sum of money, not exceeding in the aggregate the amount of the principal of such previous loan which shall at that time remain outstanding and the amount of any mechanics' liens unpaid, at a rate of interest not exceeding that allowed by law at the time, and may issue their bonds therefor, upon such terms and conditions, and secured by mortgage or otherwise, as they may deem expedient; but such new loan shall be applied exclusively to the payment of the previous loan and such mechanics' liens, and for no other purpose whatever, and all laws inconsistent herewith are hereby repealed.

(1879, May, 13; P. L. 57, § 1.)

See § 65, ante, and cross-references.

§ 67. It shall and may be lawful for any corporation existing by or under the authority of any law of this commonwealth, which shall have mortgaged any part of its estate, corporate property and franchises, for the security of all or any portion of its bonded indebtedness, to mortgage its remaining estate, corporate property and franchises, or any part of the same, as a further and additional security for the same bonded indebtedness: Provided however, That no lien then existing upon such remaining estate, property and franchises, shall be thereby impaired or affected.

(1874, May, 15; P. L. 186; § 1.)

See § 65, ante, and cross-references.

IX. LIABILITY OF STOCKHOLDERS.

§ 68. The stockholders in each of said corporations shall be liable, in their individual capacity, to the amount of stock held by each of them, for all work or labor done to carry on the operations of each of said corporations; but this section shall not be construed to increase or diminish the liability of stockholders in corporations which, by the terms of this statute, are to be governed, controlled and managed by the provisions of other statutes, but their liability shall be fixed and defined by the terms of the statutes by which said corporations are to be governed, controlled and managed.

(1876, April 17; P. L. 30, § 3.)

See §§ 69-72, post. **Liability of stockholders.** See *Iron and Steel Manufacturing Companies*, § 9. **Liability for wages of employees.** See *Manufacturing Companies*, § 11. For debts on withdrawal of capital, see *Id.*, § 4. Of directors, see *Id.*, § 5.

[Laborers are, in addition to the remedy afforded by this section, entitled to such other remedies

for the collection of debts due them as are possessed by creditors of the corporation generally. *Laborers App.*, 105 Penn. St. 19. Laborers may proceed against stockholders who have paid their subscription in full. *Id.*]

§ 69. In any action or bill in equity, brought to enforce any liability under the provisions of this act, the plaintiff may include as defendants any one or more of the stockholders of such corporation, claimed to be liable therefor; and if judgment be given in favor of the plaintiff for his claim, or any part thereof, and any one or more of the stockholders, so made defendants, shall be found to be liable, judgment shall be given against him or them. The execution upon such judgment shall be first levied on the property of such corporation, if to be found in the county where the chief business of the corporation is carried on, and in case such property, sufficient to satisfy the same, cannot be found in said county, the deficiency, or so much thereof as the stockholder or stockholders, defendants in such judgment, shall be liable to pay, shall be collected of the property of such stockholder or stockholders; on the payment of any judgment as aforesaid, or any part thereof, by one or more stockholders, the stockholder or stockholders so paying the same shall be entitled to have such judgment, or so much thereof as may have been paid by him or them, assigned to him or them for his or their benefit, with power to enforce the same in manner aforesaid, first against the company, and in case the amount so paid by him or them shall not be collected of the property of the corporation, then ratably against the other solvent stockholders, if any such there be, originally liable for the claim on which such judgment was obtained; but no stockholder shall be personally liable for payment of any debt contracted by any such corporation, unless suit for the collection of the same shall be brought against such stockholder or stockholders within six months after such debt shall have become due.

(1874, April 29; P. L. 73, § 15.)

See § 68, ante; § 80, post.

[See *Cornell's App.*, 18 W. N. C. 289.]

§ 70. The officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporation otherwise than in this provided.

(1874, April 29; P. L. 73, § 24.)

See § 17, ante.

§ 71. In all actions or proceedings now or hereafter brought or instituted in any county within this commonwealth, to charge the stockholders of any corporation with any of the debts of such corporation, or to en-

force payment of instalments due upon stock, service of summons or other process may be made upon the stockholders resident within such county in the same manner as writs of summons are now directed to be served, and upon those residing in other counties of this commonwealth by the sheriff of the county in which they may respectively reside, and upon those non-residents of this commonwealth by publication for four successive publications in a newspaper published within the county where such action or proceeding is brought or instituted, and also in the State in which such non-residents may reside, as the court from which such action or proceeding shall issue may direct, and a copy of such publication shall be mailed to the post-office address of such non-resident stockholders, if such address can be ascertained.

(1874, May 14; P. L. 146, § 1.)

Service of summons. § 82, post, and cross-references.

§ 72. It is hereby declared to be the true intent and meaning of the statutes of limitation, that no suit at law, or in equity, shall be brought, or maintained, against any stockholder, or director, in any corporation, or association, to charge him with any claim for materials, or moneys, for which said corporation, or association, could be sued, or with any neglect of duty as such stockholder, or director, except within six years after the delivery of the materials, or merchandise, or the lending to or deposit of money with said corporation, or association, or the commission of such act of negligence by such stockholder, or director.

(1867, March 28; P. L. 48, § 1.)

See § 68, ante. Limitation of liabilities. See Manufacturing Companies, § 6.

[See *Amer v. Armstrong*, 6 Penn. C. C. 392.]

X. AMENDMENTS TO CHARTERS.

§ 73. When any corporation, formed for any of the purposes named in the second class of section two of the act to which this is a supplement, or embraced in that class by any of the supplements, and which shall have been or may hereafter be incorporated under the provisions of that act or its supplements, as also any corporation of the second class which has heretofore or may hereafter accept the provisions of said act and the several supplements thereto, and the constitution of this commonwealth, in the manner provided by law, shall desire to improve, amend or alter the articles and conditions of the charter or instrument upon which said corporation is formed and established, it shall and may be lawful for such corporation to apply to the governor of this commonwealth for such improvement, amend-

ment or alteration in the manner provided by this act.

(1883, June 13; P. L. 122, § 1.)

See Const., art. XVI, § 10, and cross-references. Charter, § 6, ante. Charters validated, § 9, ante. Manner of amendment, etc. §§ 74-79, post. Subject to power of legislature, § 158, post.

[Change in name of corporation is not an improvement, amendment or alteration within the meaning of this act. In re Petition, 1 Penn. C. C. 62; s. c., 16 W. N. C. 510.

See contra, In re Wetherill, 5 Penn. C. C. 337; In re Col. Co., 3 W. N. C. 48.

Above act repeals the act of April 20, 1869, which authorized courts of common pleas to change the name, style and title of corporations. *Port Pitt Assn. v. Loan Assn.*, 159 Penn. St. 30, 1 S. C. 28 Ark. Rep. 203.]

§ 74. The corporation desiring such improvement, amendment or alteration shall give notice of the intention to apply therefor in two newspapers of general circulation, printed in the county wherein the principal office or place of business of said corporation is located, once a week for three weeks, setting forth briefly the character and objects of the desired improvements, amendments or alterations, and the intention to make application therefor.

(1883, June 13; P. L. 122; § 2.)

§ 75. The said corporation shall prepare a certificate under its corporate seal, setting forth the character and objects of the proposed improvement, amendment or alteration of their charter or the instrument upon which said corporation is formed or established, acknowledged by the president and secretary of said corporation, before the recorder of deeds of the county wherein such corporation has its principal office or place of business, which certificate, together with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of the commonwealth, who shall examine the same, and if he find it to be in proper form, and that such improvements, amendments or alterations are or will be lawful and beneficial, and not injurious to the community, and are in accord with the purposes of the charter, he shall approve thereof and endorse his approval thereon, and direct letters-patent to issue in the usual form, reciting the said improvements, amendments or alterations, and the said certificate shall then be recorded in the office of the secretary of the commonwealth, and with all its endorsements shall then be recorded in the office for the recording of deeds in and for the proper county where the principal office or place of business of said corporation is located, and from thenceforth the same shall be deemed and taken to be a part of the charter or instrument upon which said corporation was formed or established, to all intents and purposes as if the same had originally been made a part thereof: Provided, That nothing herein contained shall

Amendments to charter — Gen. Laws, §§ 76-80.

authorize the amendment, alteration, improvement or extension of the charter of any gas or water company so as to interfere with or cover territory previously occupied by any other gas or water company. (1883, June 13; P. L. 122, § 3.)

See § 10, ante. Letters-patent to be issued. § 13, ante.

§ 76. Nothing in this act contained shall be construed to repeal or authorize the repeal of any of the requirements or restrictions of the said act of April 29, 1874, and its supplements, nor to dispense with any of the provisions of the said act, nor to authorize the right of eminent domain to be given to any corporation by amendment of its charter, nor to permit any change in the objects and purposes of such corporation as shown by its original charter. (1883, June 13; P. L. 122; § 4.)

See Const., art. III, § 7.

§ 77. As often as the corporations named in the first class, specified in the second section of the act to which this is a supplement, including all such corporations now in existence, and academies, colleges and universities, shall be desirous of improving, amending or altering the articles and conditions of their charters, it shall and may be lawful for such corporations, respectively, in like manner to specify the improvements, amendments or alterations which are or shall be desired, and exhibit the same to the court of common pleas of the proper county in which said corporation is situated as aforesaid, where, if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of the statute to which this is a supplement or of the constitution, it shall be the duty of said court to direct notice to be given, as provided in the third section of the act to which this is a supplement, of such application, and after decree made and such amendments are recorded, the same shall be deemed and taken to be a part of the charter of the said corporation; and if any two or more such corporations shall desire to consolidate and merge with each other, or one or more within the other, upon application to the court of common pleas of the county in which the corporation is situated, into which the one or more desire to merge or become consolidated with the same, proceedings shall take place as are required on an application to amend; and upon decree being made by said court, and the same being recorded in said county, upon the terms specified in said application, the said corporations, with all their rights, privileges, franchises, powers and liabilities, shall merge and be consolidated into, by the name, style and title given to the same in

such decree, and upon the terms, limitations and with the powers stated and conferred in said application and decree.

(1876, April 17; P. L. 30, § 12.)

See § 10, ante.

[Amendment to an existing charter should not be advertised until they have been approved by the court. In re Charter, 1 Del. Co. Rep. 415.]

An amendment seeking a privilege not conferred by the act to which this is a supplement will not be allowed, though the corporation applying therefor obtained its charter prior to 1874. In re Salem's Church, 15 W. N. C. 567.]

§ 78. Where charters of incorporation have been granted by the legislature, for a purpose where authority to grant charters is or may be vested in the courts, it shall be lawful for such courts to alter, amend, and improve the same upon like proceedings, and with like effect, as if the original charter had been granted by the court.

(1854, May 8; P. L. 674, § 1.)

See § 73, ante.

§ 79. It shall be lawful for the several courts of common pleas of this commonwealth to change the name, style and title of any corporation within their respective counties, with the same proceedings and in the same manner as they are now authorized to improve, amend or alter charters: Provided, That no proceeding for such purpose shall be entertained by the courts until notice of such application is given to the auditor-general, and proof of such fact is produced to the courts; and upon final decree in such proceeding, before using such name, the parties in interest shall file with the auditor-general a copy of the decree making such change.

(1869, April 20; P. L. 82, § 1.)

See § 73, ante.

[This proviso is mandatory and applies to all corporations. In proceedings for change of name, instituted by any corporation, notice to the auditor-general is a prerequisite to the court's jurisdiction; this act not repealed by Act of 1874. In re Application, 107 Penn. St. 543; 111 id. 156; s. c., 2 Atl. Rep. 574; s. c., 15 W. N. C. 499; 17 id. 97.]

Repealed as to corporations of the second class by Act of 1883. Fort Pitt Assn. v. Model Assn., 159 Penn. St. 308; s. c., 28 Atl. Rep. 215.

See In re Wetherill Co., 5 Penn. C. C. 337, overruling In re Petition, 1 id. 62.]

XI. SUITS AGAINST CORPORATIONS.

§ 80. Suits may be brought against corporations by their corporate names, before any court or magistrate of competent jurisdiction, by summons, which may be served on the president or other principal officer, or on the cashier, treasurer, secretary or chief clerk of such corporation: Provided, That no suit shall be sustained on any bank

note or notes payable to bearer or order on demand, unless demand shall have been first made for payment thereof at their banking house, office or treasury, and in case of non-payment, interest shall be recoverable on the same from the time of making such demand.

(1817, March 22; 6 Sm. L. 438, § 1.)

See §§ 81-93, post. Liability of stockholders enforced by suits against corporation. § 69, ante. Jurisdiction of courts of common pleas. § 112, post. Suits against foreign corporations. See Foreign Corporations, §§ 11-13. Quo warranto proceedings. See Quo Warranto, §§ 1 et seq. Appeals by corporation. See Appeals, §§ 32-41; Wages, §§ 23, 26. Equity jurisdiction. See Common Pleas, §§ 19, 20; Execution, §§ 182-188.

[Service must be upon some person who is a representative of corporation designated in the act, and that fact must appear in the return or affidavit of service. In re R. R. Co.'s App., 102 Penn. St. 38.]

§ 81. Every corporation, aggregate or sole, shall be amenable to answer upon a writ of summons as aforesaid, and in the case of a corporation aggregate, except counties and townships, service thereof shall be deemed sufficient, if made upon the president or other principal officer, or on the cashier, treasurer, secretary or chief clerk of such corporation, in the manner hereinbefore provided.

(1836, June 13; P. L. 568, § 41.)

Service of process. § 71, ante. See §§ 82, 83, 86, post. Service on foreign corporation. See Foreign Corporations, § 12. On manufacturing corporation. See Manufacturing Companies, § 10. Failure of corporation to appear. § 84, post. Service by publication. § 89, post.

§ 82. In actions for damages, occasioned by a trespass or injury done by a corporation, if the officers aforesaid, of such corporation, or any of them, shall not reside in the county in which such trespass or injury shall be committed, it shall be lawful to serve the summons upon any officer or agent of the corporation at any office or place of business of the corporation within the county, or if there be no such officer or place of business, it shall be lawful to serve the summons upon the president, or other principal officer, cashier, treasurer, secretary, or chief clerk, in any county or place where they may be found.

(1836, June 13; P. L. 568, § 42.)

See § 81, ante, and cross-references.

§ 83. Hereafter when any action is commenced by any person against any corporation, in any county in which the property of said corporation was wholly or in part situated, it shall be lawful, if the president, treasurer, secretary or chief clerk

do not reside or cannot be found in such county, for the sheriff or officer to whom any process may be directed to serve the same on any manager or director in such county, and the service so made shall be deemed sufficient; and in case no director or manager can be found in such county, it shall be lawful for the sheriff or other officer to whom such process is directed to go into any county to serve the process aforesaid.

(1856, March 17; P. L. 388, § 1.)

See § 81, ante, and cross-references; and Foreign Attachment, § 4, at p. 51.

[Service outside the county in which the action is commenced is not authorized, unless property of corporation was wholly or in part situated in the county in which the suit was brought, at the time the action was commenced; it is not enough that property of a corporation was situated in the county at the time the cause of action arose; it must appear that it was situated there when action commenced. *Hawn v. Penn. Co.*, 154 Penn. St. 453; 8, c., 26 Atl. Rep. 544. See, also, *Silva v. Greenwald*, 2 Penn. C. C. 131.

Service on a director of corporation under this act is good, though none of its officers reside in the county, where it appears that part of the corporate property is within the county and the articles of association designate the county as the place of its principal office. *Grubb v. Mfg. Co.*, 10 Phil. 316. The word "property," as used in the act, includes both real and personal. Id.]

Above section does not alter or affect the act of 1836, June 12 (Foreign Attachments, § 4), which allows foreign attachments against foreign corporations. *Beal v. Supply Co.*, 2 D. R. 671.]

§ 84. If any corporation, summoned as aforesaid, shall not appear by their officer, agent or attorney, at the time mentioned in said summons, then or at any time afterwards, on proof of the service of the summons, by the oath or affirmation of the officer serving the same, judgment, by default, shall be rendered against said corporation, for the sum which to the court or magistrate shall appear to be due.

(1817, March 22; 6 Sm. L. 438, § 2.)

See § 81, ante. Judgments against foreign corporation. See Foreign Corporations, § 13.

§ 85. In case of appeal, certiorari or writ of error, by any corporation, the oath or affirmation required by law shall be made by the president or other chief officer of the corporation, or in his absence, by the cashier, treasurer or secretary; and when any corporation shall be sued, and shall appeal or take a writ of error, the bail requisite in that case shall be taken absolute for the payment of the debt, interest and costs, on affirmation of the judgment.

(1817, March 22; 6 Sm. L. 438, § 4.)

Affidavit to be made by certain officers. See Appeals, § 32. Bail on appeal. § 88, post.

[Corporations may have a writ of error without bail; but in such case it is not a supersedeas. *Savings Inst. v. Smith*, 7 Penn. St. 291. An appeal by a corporation will be dismissed if the security given be less than debt, interest and costs.

Suits against corporations — Gen. Laws, §§ 86-93.

Turnpike Co. v. Naglee, 9 S. & R. 227. Since the act of 1852, June 11 (P. L. 611), affidavit may be made by any special deputy of the corporation. *Academy v. Power*, 11 Penn. St. 412.]

§ 86. Rules of reference, and all notices whatsoever, may, where a corporation is a party in any suit, be served on the president or other principal officer, or cashier, or secretary or chief clerk of such corporation. (1817, March 22; 6 Sm. L. 438, § 5.)

See § 81, ante, and cross-references.

§ 87. In cases in which a corporation shall be a party in any suit in any court, or before any magistrate, all the proceedings, except as regulated by this act, shall be the same as directed by law in other similar cases.

(1817, March 22; 6 Sm. L. 438, § 6.)

See § 80, ante.

§ 88. When any corporation (municipal corporations excepted), being sued, shall appeal or take a writ of error, the bail requisite in that case shall be taken absolute, for the payment of debt, interest and costs, on the affirmance of the judgment.

(1847, March 15; P. L. 361, § 1.)

Appeals by corporation. See Appeals, §§ 32-41. Oath on appeal. § 85, ante.

[This act applies to an appeal by a corporation from an award of arbitrators, and is not repealed by the act of 1850, April 25; P. L. 571. *Mfg. Co. v. Lehigh Co.*, 14 Phila. 644; but see *Rush v. Assn.*, 1 Wilcox, 13. When a corporation appellant is but a garnishee in attachment proceedings, bail absolute for debt, interest and costs is not required under this act. *Shimer v. Stackhouse*, 1 Leh. V. R. 56.]

§ 89. In all cases where any company has been incorporated by this commonwealth, and the principal office for the transaction of business thereof shall be located out of this State, and where none of the officers upon whom process can be served, under the existing laws of the commonwealth, reside in the State, it shall be lawful to sue said company, in any county in this State where the said company, at any time, transacted the business thereof, or where the works or real estate of such company were located; and such legal process may be served on such company, by publication of a copy of the process in such newspaper as the court may direct, for six weeks previous to the return day; and for every purpose of legal proceeding, such company shall be taken, both in law and equity, to be located in this State, and shall be liable to writs of quo warranto, mandamus, attachment and execution, and service of such process by publication as aforesaid, shall be to all intents and purposes as effective as if

served upon the president of such company, or other officer of the same, and he or they resident of the proper county of this State, and as if the company's office were within the State; and any property, of any description, of such company, within the State, shall be liable to attachment and execution; and any such property, which would be liable to attachment or execution, if the said office were located in this State, shall be taken to be in this State for such purpose, and shall be liable to levy and sale, in the same manner as if the officers of said company resided in the county in this State in which the same is liable to be sued by the provisions of this act.

(1852, April 11; P. L. 449, § 1.)

See § 81, ante.

[Making of unprofitable contract held to pertain to internal management, so that stockholders' bill is cognizable only at corporation's domicile. *Madden v. Penn. Electric Light Co.*, 37 Atl. Rep. 817.]

§ 90. In all cases where railroad, or other corporations, not municipal, shall be liable, either as principals or guarantors, to pay the interest on bonds, the validity of which bonds shall have been established by a court of competent jurisdiction, and such corporations subject the holders of such bonds to the necessity of bringing suits to recover the said interest, the said corporation shall, in addition to the ordinary costs of suit, pay the fees of the plaintiff's counsel, not exceeding ten per cent. on the amount recov-

(1866, May 3; P. L. 116, § 1.)

See § 80, ante, § 91, post.

§ 91. The true intent and meaning of an act entitled "An act compelling railroad and other corporations to pay fees of plaintiff in certain cases," approved May 3, 1866, is and is hereby declared to be that corporations named in said act shall only be liable to pay the plaintiff's counsel fees in case said corporations have contested the validity of the bonds for the recovery of the interest on which suit has been brought, and such validity has been established by a court of competent jurisdiction.

(1871, March 16; P. L. 231, § 1.)

§ 92. In every suit or judicial proceeding, in this commonwealth, to which a corporation is a party, the existence of such incorporation shall be taken to be admitted, unless it is put in issue by the pleadings.

(1885, June 24; P. L. 149, § 1.)

See § 80, ante.

§ 93. In all proceedings in courts of law or equity of this commonwealth, in which it is alleged that the private rights of individuals or the rights or franchises of other

corporations are injured or invaded by any corporation claiming to have a right or franchise to do the act from which such injury results, it shall be the duty of the court in which such proceedings are had, to examine, inquire and ascertain whether such corporation does in fact possess the right or franchise to do the act from which such alleged injury to private rights, or to the rights and franchises of other corporations, results, and if such rights or franchises have not been conferred upon such corporation, such courts, if exercising equitable power, shall, by injunction, at suit of the private parties or other corporations, restrain such injurious acts; and if the proceedings be at law for damages, it shall be lawful therein to recover damages for such injury as in other cases.

(1871, June 19; P. L. 1360, § 1.)

Quo warranto proceedings. See Quo Warranto, §§ 1 et seq.

[One passenger railway company as complainant may, under this act, attack the right of another similar company to lay tracks on a street already occupied by the tracks of the former. *German-town Co. v. Ry. Co.*, 151 Penn. St. 138; s. c., 24 Atl. Rep. 1103; s. c., 31 W. N. C. 281; affirming 9 Penn. C. C. 638.

Under this act, a private citizen, suffering injury from the act of a corporation, may by proper proceedings test the corporation's right to do the act by virtue of its charter; but cannot collaterally attack the charter itself; as by establishing grounds of forfeiture or otherwise. *Western R. R. Co.'s App.*, 104 Penn. St. 399; *Legee v. Ry. Co.*, 10 Phila. 362; *Market Co. v. R. R. Co.*, 142 Penn. 580; s. c., 21 Atl. Rep. 902, 989.

And a city may maintain a bill in equity to test the right of a corporation to construct an elevated railway, extending across its streets. *City v. Philadelphia*, 25 W. N. C. 320.

A bill in equity will also lie at the instance of a citizen to restrain a railway company from laying tracks, without charter authority, on a street in front of his property. *Wirth v. Ry. Co.*, 2 W. N. C. 650.

Where a private citizen can allege no special personal injury he has no standing in court under this act. *Seitz v. Traction Co.*, 5 Penn. C. C. 469; s. c., 1 North Co. R. 238.

An interest as stockholder in a corporation, against which injury is threatened by another corporation, will not entitle a party complainant to sustain a bill against the latter company. *Id.*]

XII. ASSESSMENT OF DAMAGES.

§ 94. In all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property, materials or franchises for the public purposes thereof, and the said corporation cannot agree with the owner or owners of any such waters, streams, lands, materials or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, lands or materials, which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the court of common pleas of the

proper county, on application thereto, by petition, either by said corporation or by the owner or owners or any one in behalf of either, shall appoint five discreet and disinterested freeholders of the proper county, and appoint a time, not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained, or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, or any three of them, having been first duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams or property so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said streams, land or materials, in consequence of the making the improvements or conducting the operations of such corporation or of the construction of works for which the property is to be taken; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said corporation; and each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, water, water-rights, franchises or materials, the corporation shall tender a bond with at least two sufficient sureties to the party claiming or entitled to any damages, or to the attorneys or agent of any person absent, or to [the] guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be

Dissolution of corporations — Gen. Laws, §§ 95-97.

entitled to receive after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act: Provided, That in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court and thereafter the said corporation may present said bond to the court of common pleas of the county where the lands, streams, water or materials are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.

The viewers provided for in this section may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for; and upon the report of said viewers, or any four of them, being filed in said court, either party, within thirty days thereafter, may file his, her or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment, either party may have a writ of error thereto from the supreme court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and if allowed, a new view shall be ordered; and if disallowed, the appeal shall proceed as before provided.

(1874, April 29; P. L. 73, § 41.)

See Const., art. XVI, § 8.

XIII. DISSOLUTION OF CORPORATIONS.

§ 95. It shall be lawful for any court of common pleas of the proper county to hear the petition of any corporation under the seal thereof, by and with the consent of a majority of a meeting of the corporators, duly convened, praying for permission to surrender any power contained in its charter, or for the dissolution of such corporation; and if such court shall be satisfied that the prayer of such petition may be granted without prejudice to the public welfare, or the interests of the corporators, the court may enter a decree in accordance with the prayer of the petition, whereupon such power shall cease or such corporation be dissolved: Provided, That the surrender of any such power shall not in anywise remove any limitation or restriction in such

charter; and that the accounts of the managers, directors, or trustees of any dissolved company shall be settled in such court and be approved thereby; and dividends of the effects shall be made among any corporators entitled thereto, as in the case of the accounts of assignees and trustees: Provided further, That no property devoted to religious, literary, or charitable uses shall be diverted from the objects for which they were given or granted: Provided, That the decree of said court shall not go into effect until a certified copy thereof be filed and recorded in the office of the secretary of the commonwealth.

(1856, April 9; P. L. 293, § 1.)

Charter, § 6, ante. Proceedings on dissolution, §§ 96-99, post. Quo warranto proceedings. See Quo Warranto, §§ 1 et seq.

[When business is carried on in one county, and the meeting place of directors in another, the advertisement of the presentation of the petition should be published in both counties. In re Ashton Co., 5 Penn. C. C. 400; s. c., 22 W. N. C. 23.

This act is not restricted in its application to such corporations only as are formed under the authority of courts of common pleas. Commonwealth v. Shifer, 53 Penn. St. 11; In re Credit Mobilier, 10 Phila. 2.

In Philadelphia, under a rule of court, if the petition is accompanied by an account, which it is desired to have confirmed, it should be published once a week for four full weeks; a corporation can be dissolved only in the manner prescribed by this act, and any attempt to wind up its affairs and distribute its property in any other way is illegal. Riddell v. Harmony Co., 8 Phila. 310.

The petition under this act should be accompanied by proof of advertising. In re Church, 4 Penn. C. C. 272; s. c., 20 W. N. C. 317.

As to time and manner of advertisement. Id.; In re Machine Co., 19 Phila. 465; s. c., 6 Penn. C. C. 65.]

§ 96. The "proper county" intended by said act, approved as aforesaid, may be, at the option of any corporation praying for permission to dissolve in the way and manner in said act designated, either the county in which the principal operations of the corporation are conducted, or that county in which its principal office or place of business is located: Provided, That notice of said application shall be given by publication in two papers in the county in which the principal operations are conducted and that in which the principal office is located.

(1872, April 4; P. L. 40, § 1.)

See Quo Warranto, §§ 2, 11.

§ 97. Whenever any corporation, incorporated under the laws of this commonwealth, shall have been dissolved by judgment of ouster, upon proceedings of quo warranto in any court of competent jurisdiction, all the estate, both real and personal, of which such corporations are in any way seized or possessed, shall pass to and vest in the persons who at the time of such dissolution are the

Dissolution; sale of corporate franchises, etc.— Gen. Laws, §§ 98–100.

officers of such corporation, in trust to hold the same for the benefit of the stockholders and creditors of the corporation.

(1872, April 4; P. L. 46, § 1.)

See Quo Warranto, § 22; Escheat, § 43.

§ 98. Whenever any corporation incorporated under the laws of this commonwealth shall be dissolved by judgment of ouster upon proceedings by quo warranto in any court of competent jurisdiction, the said court, or in vacation any one of the law judges thereof, shall have power to appoint a receiver, who shall have all the powers of a receiver appointed by a court of chancery, to take possession of all the estate, both real and personal, thereof, and make distribution of the assets among the persons entitled to receive the same according to law. The powers of such receiver may continue as long as the court deems necessary for said purposes, and he shall be held to supersede an assignee of the corporation in possession.

(1893, April 26; P. L. 26, § 1.)

Appointment of receiver. See Quo Warranto, § 23.

[See Comm. v. Order of Vesta, 156 Penn. St. 531; s. c., 27 Atl. Rep. 14.]

§ 99. Whensoever it has occurred or shall happen that any corporation has been or shall be dissolved, whether by decree of court, expiration of time or otherwise, owning land or other real estate within this commonwealth, it shall and may be lawful for the court of common pleas of the county wherein the real estate is, or shall be located, upon the petition of any one or more of the shareholders or corporators, or their legal representatives, and personal notice to, and service upon, all known parties in interest whose places of residence are known, and such further notice by advertisement to others interested as the court may direct, if no reasonable and sufficient cause be shown to the contrary, to authorize the sale of such real estate, in fee simple, at either public or private sale, upon such terms as the court may designate, by a trustee to be appointed for that purpose, which trustee, before making such sale, shall give security for the faithful application of the proceeds of such sale according to law, to be approved by the court, in double the probable value of the land to be sold, and the proceeds of such sale shall be distributed by the party making the same, as part of the effects of the defunct corporation, to creditors or shareholders, as the said court may adjudge them to be entitled, and if said corporation had made sale of real estate and had not conveyed the same, such court may decree conveyance in specific execution of such contract in manner aforesaid.

(1891, April 15; P. L. 15, § 1.)

Duties of receiver. § 98, ante. Sale of property. §§ 100–104, post. See §§ 114, 117, 119, post. Settlement of taxes. See Taxation, §§ 113, 114.

[A sale under a judgment confessed by an insolvent corporation will not be restrained on the ground that a sale of company's property can be more advantageously conducted in the interest of a creditor by receivers. *Fairpoint Co. v. Watch Co.*, 161 Penn. St. 17; *Lowry v. Watch Co.*, 161 id. 123; s. c., 28 Atl. Rep. 1004.

Property of a corporation, after payment of liabilities, belongs to the existing stockholders, who, therefore, are entitled to any and all enhancements of its original value. *Estate of Eisner*, 175 Penn. St. 143; s. c., 34 Atl. Rep. 577.

The proceeds of a judicial sale of property is governed by the same rules of distribution that apply to such a sale of property or individuals. *Reynolds v. Lumber Co.*, 175 Penn. St. 437; s. c., 34 Atl. Rep. 791.]

XIV. SALE OF CORPORATE FRANCHISES AND PROPERTY.

§ 100. Whenever the material, rolling stock, property and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plankroad, or of any corporation, created by or under any law of this State, shall be sold and conveyed, under and by virtue of any process or decree of any court of this State or of the circuit court of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust, without any process or decree of a court in the premises, the person or persons for or on whose account such material, rolling stock, property and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plankroad, or of any corporation, created by or under any law of this State, may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim and demand in law and equity, of, in and to such material, rolling stock, property or franchises of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge or plankroad, or of any corporation created by or under, any law of this State, with the appurtenances, and with all the rights, powers, immunities, privileges and franchises of the corporation as whose the same may have been so sold, and which may have been granted to or conferred thereupon, by any act or acts of assembly whatsoever, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby; and the person for or on whose account any such material, rolling stock, property and franchises of any gas, water, iron, steel, lumber, oil, or mining or manufacturing, transportation or tele-

Sale of corporate franchises and property — Gen. Laws, §§ 101-103.

graph company, or any railroad, canal, turnpike, bridge or plankroad, or of any corporation, created by or under any law of this State, may have been purchased, shall meet, within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors (to continue in office until the first Monday of May succeeding such meeting, when and annually thereafter on the said day a like election for a president and six directors shall be held to serve for one year), and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, not exceeding the amount authorized in the original charter, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers, aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each, and may then or at any time thereafter create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time to issue bonds, at a rate of interest not exceeding six per centum, to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof: Provided, That no coal, iron, steel, lumber, or oil, or mining, manufacturing, transportation or telegraph company shall have the benefit of this act unless it shall have previously filed, with the secretary of State, its acceptance of all the provisions of the Constitution, as provided by law.

(1887, May 31: P. L. 278, § 1.)

Corporation may convey property and franchises. § 59, ante. See §§ 101-104, post.

[Where several persons purchased the charter and stock of a corporation, and guaranteed the vendors against any claim for commissions which might be made by an agent in whose hands the charter had been placed for sale, it was held that purchasers were personally liable on guaranty, but that company was not liable in absence of a clear and unequivocal ratification. *Denniston v. Invest. Co.*, 162 Penn. St. 863; s. c., 29 Atl. Rep. 275.]

Where property of corporation was sold under a mortgage, and purchasers organized a new company, took possession of all the assets of the old company, and agreed to pay a certain amount for personal property and to account for book accounts, held, that new company was not liable for book accounts which they were unable to collect. *Huston v. Clark*, 162 Penn. St. 435; s. c., 29 Atl. Rep. 866, 868.]

§ 101. It shall be the duty of such new corporation, within one calendar month after its organization, to make a certificate thereof, under its common seal, attested by

the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its president and directors, and transmit the said certificate to the secretary of State, at Harrisburg, to be filed in his office and there remain of record; and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.

(1878, May 25; P. L. 145, § 2.)

See § 6, ante.

§ 102. The provisions of this act shall not inure to the benefit of any corporation unless such corporation shall, before claiming or using the benefits of this act, file in the office of the secretary of the commonwealth an acceptance of the provisions of article sixteen of the Constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees or other proper officers of such corporation, certified under the seal of the corporation; and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence, for all purposes.

(1878, May 25; P. L. 145, § 3.)

See § 120, post.

§ 103. In all cases in which the property and franchises of any corporation mentioned in the act and its supplement to which this is a further supplement, or of any telegraph company, may have been or shall hereafter be purchased at any sale, by virtue of any process or decree of any court of this commonwealth or the circuit court of the United States, or under or by virtue of a power of sale contained in any mortgage, or deed of trust, without any process or decree of a court in the premises, the person or persons, for or on whose account the same may have been or shall hereafter be purchased, shall have power and authority to determine the amount of the capital stock and bonds to be issued therefor, and to issue therefor certificates for the said capital stock, and also bonds, and secure the same by mortgage or mortgages on the real and personal property, corporate rights and franchises purchased. Such stock or bonds, or both, shall be issued to the purchaser or purchasers for their respective interests, in such amounts and proportions as may be determined by themselves, and shall be deemed and taken to have been issued for and in consideration of the property and franchises so purchased and received: Provided, That no railroad, canal or other transportation company, or telegraph company, shall have the benefit of this act unless it shall have previously filed, with the secretary of State, its acceptance of all the provisions of the Con-

Miscellaneous provisions — Gen. Laws, §§ 104-109.

stitution of this State, in manner and form as provided by law.

(1887, May 31; P. L. 276, § 1.)

See § 38, ante, and cross-references. Power to mortgage. § 65, ante.

§ 104. In all cases in which the property and franchises of any corporation mentioned in the act and its supplements [and] to which this is a further supplement, or of any telegraph company, have been sold, by virtue of any [or] decree of any court of this commonwealth, or the circuit court of the United States, and the person or persons for or on whose account the same have been purchased have organized a corporation under the provisions of said act and have issued stock and bonds to the purchaser or purchasers for their respective interests, secured by mortgage, in such amount and proportions as may have been determined and agreed upon by them, such issues are hereby ratified, approved and confirmed.

(1878, May 25; P. L. 148, § 2.)

See § 38, ante, and cross-references. Acts validated. § 106, post.

XV. MISCELLANEOUS PROVISIONS.

§ 105. All charters of incorporation, the supplements and amendments thereto, heretofore granted by the supreme court and the several courts of common pleas of this commonwealth, are hereby validated and confirmed: Provided, That the provisions of this act shall only apply to such corporations as are actually operating under and transacting business in pursuance and by virtue of such charters, supplements and amendments: And provided further, That said corporations shall hold their charters, supplements and amendments, subject to all the requirements and restrictions of the Constitution of this commonwealth, and that this act shall not affect any rights acquired previous to its enactment.

(1874, May 11; P. L. 133, § 1.)

See Const., art. III, § 7. Charter. § 6, ante. Charter validated. § 9, ante.

§ 106. Where any act has been done, or transfer or conveyance of any property been made to or by any corporation created or intended to be created by virtue of the provisions of the said act of assembly, or its supplements, in good faith, before the actual record of their charters, such acts, transfers and conveyances shall, after such record has been duly made, be deemed and taken to be valid and effectual for all purposes, saving, nevertheless, the just rights of persons, if any, acquired before the passage of this act, by reason of the failure to record such charters.

(1874, April 1; P. L. 51, § 1.)

See § 104, ante. Acts validated. Act No. 1, at p. 70.

§ 107. In all cases in which heretofore any privileges or immunities have been granted to any corporation, by any act of the general assembly of the commonwealth, upon terms and conditions in such act prescribed, for the knowing and intentional neglect or refusal to perform and comply with which terms and conditions a forfeiture or determination of such privileges and immunities is provided for in the act, it shall be the duty of the attorney-general of the commonwealth, upon complaint made to him by any party whose rights or interests are affected by such neglect or refusal, to institute forthwith proceedings, in a court of competent jurisdiction, to ascertain the fact of such neglect or refusal; and if such neglect or refusal shall be adjudged by such court to have occurred, then and in such case all the rights, privileges, powers and immunities granted to said corporation, upon such terms and conditions, shall forthwith cease and determine; and thereupon the governor of the commonwealth shall provide such organization as may be needful to manage any such property until otherwise directed by the legislature: Provided however, That all expenses incident to the management thereof shall be paid from its own proceeds; and nothing in this act contained shall be deemed as authorizing any liability against, or expenditure by, the commonwealth of Pennsylvania: Provided, That when proceedings under the provisions of this act are commenced, in any court other than the supreme court, the right of appeal to the supreme court shall exist, to either party, as in other cases: Provided further, This act shall not apply to bridge companies.

(1870, April 1; P. L. 45, § 1.)

See § 6, ante; Quo Warranto. § 2.

§ 108. Every charter of incorporation granted, or to be granted, shall be deemed and taken to be subject to the power of the legislature, unless expressly waived therein, to alter, revoke or annul the same, whenever in their opinion it may be injurious to the citizens of the commonwealth; in such manner, however, that no injustice shall be done to the corporators, and as fully as if the reservation of said power had been therein expressed.

(1855, May 3; P. L. 423, § 1.)

Laws impairing obligation of contracts prohibited. Const., art. I, § 17. Power of assembly to amend. Id., art. XVI, § 10. Amendments to charter. §§ 73-79, ante.

§ 109. The provisions of the act, entitled "An act to extend the time during which corporations may hold and convey the title to real estate heretofore bought under execution, or conveyed to them in satisfaction of debts and now remaining in their hands unsold," approved May 26, 1887,

which provides "that the time during which all corporations are authorized by law and their charters to hold and convey real estate acquired by them under execution, or in satisfaction of debts, be and the same is hereby extended to all property heretofore bought and now held by such corporations for and during a further period of five years from and after the expiration of the time during which, as aforesaid, they are now so authorized to hold and convey the same," be and the same are hereby revived, continued and extended for a further period of five years from and after the time for which they are now authorized by law to hold the same.

(1883, May 18; P. L. 88, § 1.)

Time further extended. See Act of 1897, at p. 75. Title to real estate secured. § 117, post. See Execution, § 186; Foreign Corporations, § 10.

§ 110. From and after the passage of this act it shall not be lawful for any corporation within this commonwealth, directly or indirectly, either by itself or through any agent or agents, individual or individuals, to make, issue, reissue, pay out or circulate, or cause to be issued, reissued, put out or circulated, any certificate, check, order or due bill, or acknowledgment of indebtedness of any description for any purpose whatsoever, payable or redeemable in any goods, property or effects, or payable or redeemable in anything except gold and silver, and that any violation of the provisions of this act shall be held and deemed to be a forfeiture of the charter of any company so offending, and any private citizen may by quo warranto proceed, according to law, to have such forfeiture declared: Provided, That this act shall not be construed to authorize any corporation or individual, not expressly authorized by existing laws, to issue any note, bill, check or certificate whatever, in the nature or similitude of a bank note, and intended for circulation; and that all laws inconsistent with this act be and the same are hereby repealed: And provided further, That this section shall not be construed so as to prevent any corporation from drawing orders in the ordinary course of business, not intended for circulation, or in payment of interest, and that such orders shall not be negotiable.

(1849, April 21; P. L. 673, § 1.)

See § 107, ante.

§ 111. From and after the passage of this act corporations organized for profit under the laws of the commonwealth of Pennsylvania may, out of the earnings of said corporations, grant allowances or pensions to employees for faithful and long-continued service who have, in such service, become old, infirm or disabled: Provided, That the provisions of this act shall not apply to any

director or officer of any such company or corporation.

(1883, May 11; P. L. 42, § 1.)

Provisions relating to employees. See Wages, §§ 21 et seq.

§ 112. The several courts of common pleas of this commonwealth having the powers of a court of chancery shall have jurisdiction of all litigation and disputes between stockholders and parties claiming to be stockholders, and between creditors and stockholders and creditors and the corporation, of all corporations within this State; and in the proceedings before the court in such case the service of process upon the company shall be held and considered as a service upon one of the principal defendants, as provided in the first section of the act of April 6, 1859, relating to equity jurisdiction and proceedings.

(1883, May 4; P. L. 29, § 1.)

See § 80, ante.

§ 113. Whenever any person individually, or in any public or private trust, who is now, or hereafter may be required, or permitted by law to make or execute and give a bond, or undertaking with security, conditioned for the faithful performance of any duty, or for the doing or not doing of anything in said bond or undertaking specified, any head of a department, judge of the supreme court, or prothonotary thereof, judge of the court of common pleas, or prothonotary thereof, judge of the orphans' court, register of wills, sheriff, magistrate or any other officer, who is now or shall be hereafter required to approve the sufficiency of any such bond or undertaking, may, in the discretion of such officer, accept such bond or undertaking, and approve the same, whenever the conditions of such bond or undertaking are guaranteed by a company, duly authorized by the insurance department of this State to do business in this State, and authorized to guarantee the fidelity of persons holding positions of public or private trust; and such company may become sole surety in any case where, by law, one or more sureties may be required for the faithful performance of any trust or duty: Provided however, That where such bond or undertaking shall involve the safe keeping or faithful application of the assets of any fiduciary, such head of department, judge or other officer shall make such order or decree as shall assure the retention of such assets within this commonwealth in such manner as such head of department, judge or officer may direct, until disposition thereof be made according to law.

(1885, June 25; P. L. 181, § 1.)

§ 114. Whenever any corporation may have sold, let or mortgaged, or may hereafter sell, let or mortgage, any of its cor-

porate property, real or personal, or its franchises, a copy of the minutes of any meeting of the stockholders or directors of such corporation, authorizing or directing any such sale, letting or mortgaging, proven by oath or affirmation of the secretary, or other proper custodian of such minutes, to be a full and true copy of the minutes of such meeting, so far as relates to any such sale, letting or mortgaging, shall be prima facie evidence of the matters therein set forth, in any case in which the original minutes, if duly proven, would be evidence in any judicial proceeding, relating to such property or franchises; and such copy, so probated before any officer authorized to take probate or acknowledgment of deeds for the purpose of record in this commonwealth, may be recorded in the office for recording deeds, in the proper county, in like manner, and with like effect, as other instruments of writing, relating to real estate in such county, may be recorded.

(1881, June 8; P. L. 69, § 1.)

See § 59, ante. Power to mortgage. § 65, ante. See §§ 117, 119, post; Manufacturing Companies, §§ 7, 12.

§ 115. Where any deed of conveyance, mortgage, or other instrument of writing, has been heretofore executed, or acknowledged, or both, by any corporation, under any power sufficiently authorizing the same, and shall have been informally executed, or acknowledged, by any officer, de facto, of such corporation, or shall have been executed, or acknowledged, by the officers of such corporation, in the manner prescribed by law for the acknowledgment of deeds and mortgages by individuals, such deed, mortgage, or instrument, shall be taken to be of the same validity and effect, as if executed, and acknowledged, in the manner prescribed by law for the execution, and acknowledgment, of deeds, mortgages, and other instruments, by corporations: Provided, That no case, heretofore judicially decided, shall be affected by this act.

(1863, April 22; P. L. 548, § 3.)

See § 114, ante.

§ 116. The provisions of the third section of an act entitled "An act authorizing notaries public in this State, and in any State or territory in the United States, to take acknowledgments of deeds and letters of attorney, and to confirm acknowledgments heretofore made," approved the twenty-second day of April, 1863, be and the same is hereby extended to all deeds, mortgages or other instruments of writing informally acknowledged by any corporation since the passage of said act: Provided, That no case heretofore judicially decided shall be affected by this act.

(1869, April 17; P. L. 68, § 1.)

§ 117. In all cases where the real estate of any corporation shall be sold at sheriff's sale for the payment of bona fide debts, the purchasers shall receive titles discharged from any right of forfeiture to the commonwealth, by reason of misnomer, limitation or defect of power in the said corporation to purchase and hold said lands; and the purchase money shall be distributed according to priority among the lien creditors, as in other cases.

(1844, April 30; P. L. 532, § 2.)

See Executions, § 186; Foreign Corporations, § 8.

§ 118. Whenever any such corporation, after having sold, let or mortgaged any estate, real or personal, or franchises, may have been, or may hereafter be, dissolved in pursuance of law, such probate may be made by the secretary who kept or recorded such minutes, or by any other ex-officer of such dissolved corporation having the actual custody of said original minutes, and the averment of such facts in the probate shall be prima facie evidence thereof.

(1881, June 8; P. L. 69, § 2.)

See § 99, ante.

§ 119. In case of any duly authorized sale, letting or mortgaging by a corporation, the same shall not be invalidated by any informality in the execution or acknowledgment of any conveyance, mortgage or other instrument by any officer of such corporation for carrying the same into effect: Provided, That no defect in substance shall be deemed to be cured hereby.

(1881, June 8; P. L. 69, § 3.)

See § 59, ante. Power to mortgage. § 65, ante.

§ 120. No general or special law shall be passed, conferring a benefit upon any corporation, unless such corporation shall have previously filed in the office of the auditor general the acceptance of the provisions of the Constitution.

(1878, May 22; P. L. 84, § 1.)

Laws impairing obligation of contracts prohibited. Const., art. I, § 17. See § 102, ante; §§ 121, 122, post.

§ 121. Such acceptance may be made by resolution adopted at a regular or called meeting of the directors or trustees or other proper officers of any such corporation, which shall be certified under the seal of the corporation and filed in the office of the auditor general.

(1878, May 22; P. L. 84, § 2.)

See § 10, ante.

§ 122. The auditor general shall cause a copy of such resolution to be recorded in

a book to be kept for such purpose, and a transcript of the same under the seal of the office shall be evidence for all purposes.

(1878, May 22; P. L. 84, § 3.)

§ 123. In all cases where a corporation is or shall be charged with the execution of any trust, the president, vice-president, trust officer, secretary, treasurer or actuary of such corporation shall make the usual oath or affirmation directed to be taken by private persons in such other like cases.

(1877, February 16; P. L. 3, § 1.)

§ 124. In any case where, under the provisions of the act to which this is a supplement, there has been or shall hereafter be made by the auditor general, State treasurer and attorney-general, a resettlement of any account of any corporation leasing or operating the works, or owning either the whole or a majority of the capital stock of another corporation, or whose works are leased or operated, or of whose capital stock either the whole or a majority is owned by another corporation, the credit or charge, as the case may be, resulting from such resettlement may, with the consent of the proper officers of both companies, be transferred to the account of either of said corporations.

(1876, May 4; P. L. 101, § 1.)

§ 125. If any company incorporated under this act, or any of its supplements, shall not proceed in good faith to carry on its work and construct or acquire its necessary buildings, structures, property or improvements within the space of two years from the date of its letters-patent, and shall not within the space of five years thereafter complete the same, the rights and privileges thereby granted to said corporation shall revert to the commonwealth: Provided however, That it shall be lawful for any such corporation who shall have proceeded in good faith as aforesaid, at any time before the expiration of the said period of five years, or of any extension thereof, to apply to the court of common pleas in and for the county in which said corporation shall have its principal office for an extension of such time as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting out the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company at a meeting called for that purpose, a duly certified copy of which resolution shall be annexed to said petition. Thereupon it shall be the duty of such court to set down said petition for hearing before it upon some day to be fixed by said court, and to direct that notice of such petition shall be given by publication or otherwise as the court shall direct. Upon the day so fixed, or upon such subsequent day or days as the matter may be adjourned to, said court shall proceed to a hearing of said petition, and it being made to appear to the said court that the order of notice herein provided for has been com-

plied with, said court may, by order, adjudge and direct that the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended for a period not exceeding five years beyond the time fixed by law for the completion thereof, and thereupon, upon filing a duly certified copy of such order in the office of the secretary of the commonwealth, the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended as provided in such order: Provided further, That when said buildings, structures, property or improvements are wholly within one county, said applications shall be made to the court of common pleas in and for said county.

(1880, May 16; P. L. 241, § 2.)

[Upon failure of corporation to comply with this section, all its rights and privileges at once revert to the State without any judicial proceedings. *Commonwealth v. Water Co.*, 110 Penn. St. 291; s. c., 2 Atl. Rep. 63.]

§ 126. Any corporation of the second class, created under the provisions of the act to which this is a supplement, or any of its supplements, that shall not within two years from the date of its letters-patent proceed in good faith to organize and to do the things contemplated by its charter, and have paid up at least one-fourth of its capital stock, shall be held and deemed to have forfeited its charter, and the attorney-general shall, on the application of any citizen, take the proper legal steps to forfeit and vacate its said charter, but any corporation now in existence shall have two years from the date of this act to do and perform the things by this section required.

(1883, June 13; P. L. 122, § 5.)

Unused charters void. Const., art. XVI, § 1. See § 6, ante; Quo Warranto, § 2.

§ 127. In all incorporated companies (banking companies excepted) now created or which may hereafter be created by virtue of any law of this commonwealth, and in which any portion of the stock now is or hereafter shall be held by the State, and whereon dividends have been or hereafter may be declared by the directors or managers thereof, respectively, it shall be the duty of each and every of the treasurers of the said incorporations, respectively, to pay the proportions due to the State into the treasury of this commonwealth, within sixty days after each declaration of dividends, and within sixty days after passing of this act with respect to dividends heretofore declared, and on failure to make such payment the governor is hereby directed to instruct the attorney-general to bring suit therefor against such defaulting company.

(1816, March 19; 6 Sm. L. 390.)

State not to become stockholder. Const., art. IX, § 6.

§ 128. The auditor-general be and he is hereby authorized and required to assign, transfer, and deliver to the purchaser or purchasers of stocks owned by the commonwealth in any company, sold under the provisions of the act of April 8, 1843, entitled "An act for the payment of the domestic creditors of the commonwealth, sale of State stock, and for other purposes," any certificate or certificates of stock held by the State in any such companies, which may be in his or any other public office in Harrisburg, agreeably to the provisions of any act incorporating any such company.

(1846, April 3; P. L. 239, § 1.)

See Const., art. IX, § 6.

§ 129. It shall and may be lawful for private corporations, created by or doing business in this commonwealth, to subscribe for or to purchase the capital stock and bonds of the American Steamship Company of Philadelphia.

(1871, Feb. 17; P. L. 56, § 1.)

See § 44, ante, and cross-references.

§ 130. It shall be the duty of the secretary of the commonwealth to prepare and publish, with every edition of the pamphlet laws, a certified list of all charters of incorporation filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose and location of every such corporation, and he shall prepare and publish a complete alphabetical index to the same.

(1874, April 29; P. L. 73, § 45.)

§ 131. The act entitled "An act for the creation and regulation of corporations," approved April 29, 1874, shall hereafter be cited and known as the Corporation Act of 1874, and this act shall be cited and known as the Corporation Amendment Act of 1883.

(1883, June 13; P. L. 122, § 7.)

§ 132. It shall and may be lawful for any and all companies incorporated or organized under the laws of this commonwealth, including those authorized thereby, to transport merchandise or other property, and also for the directors, managers or trustees thereof, with the approval of the stockholders, to invest the surplus or other funds or earnings of such companies in mortgages on improved real estate, in ground rents, in the loans of the United States, in the purchase from holders thereof any of the shares of the capital stock of the respective company, and also in the public debt of the State of Pennsylvania, or of the city of Philadelphia, or in other good stocks or securities, and to sell and transfer the same, and to reinvest the proceeds of such sales in securities or stocks of like kind, and to prescribe, by resolution of the directors, or the by-laws of the company, or otherwise, the mode of making such investments, pur-

chases and sales, with the approval of the stockholders, and the amount or amounts thereof to be purchased, and the price or prices to be paid or received therefor, and the reinvestment of the proceeds thereof, and to make such compensation as the said directors, managers or trustees may deem proper to any director, manager, trustee, treasurer or other agent or officer of such company, for the keeping, receiving, paying, investing or reinvesting of any of the moneys belonging to the said company, or for any other services performed by him or them as agents of the company or otherwise; and that any such companies may change and fix the time of holding their annual election for directors to such a day as they may select; a certificate of such change, duly authenticated by the proper officers of the company, shall be filed with the auditor-general of this commonwealth within thirty days after such change shall have been made.

(1868, March 31; P. L. 50, § 1.)

See §§ 17, 129, ante.

Crimes.

XXXI. Coin and Currency.

- Sec. 114. Counterfeiting corporation bonds and coupons.
115. Making or having possession of plates for counterfeiting bonds.

XXXIII. Corporate Officers.

- Sec. 138. Fraudulent account kept by corporate officer.
139. Illegal contracts by officers of mining companies.
140. Malversation by officers of railroad or canal companies.

LV. Embezzlement.

- Sec. 236. Embezzlement by officers of corporations.

LXI. Foreign Corporations.

- Sec. 272. Agents doing business for foreign corporations not complying with act, guilty of a misdemeanor.

LXVI. Forgery.

- Sec. 277. Forgery of corporate seal.
283. Destroying or mutilating the books of a corporation.

CXL. Taxes.

- Sec. 608. Neglect by officers of corporations to make report to auditor-general, a misdemeanor.

CXLIX. Wages.

- Sec. 630. Refusal to pay wages semi-monthly a misdemeanor.
631. Wages to be paid in cash, or cash orders, under penalty.

XXXI. COIN AND CURRENCY.

§ 114. If any person shall falsely and fraudulently make, forge, or counterfeit, or cause, or procure, or willingly aid, or assist, in making, forging, counterfeiting or altering any coupon, or other instrument of writing for the payment of money, purporting to be attached to or form part of any bond, or obligation, issued by the United States, by this, or any other State, or territory, or any municipal or other corporation, company or individual, or shall pass, utter, publish or attempt to pass, utter or publish, as true and genuine, any false, forged, or counterfeited coupon, or other instrument, of the form and similitude thereof, as aforesaid, knowing the same to be false, forged or counterfeit, with intent to defraud any person, company, or corporation, whatever, or the United States, or this, or any other State or territory, or shall sell, utter or deliver, or cause to be sold, uttered or delivered, any such false, forged or counterfeit coupon, or other instrument, as aforesaid, knowing the same to be such, or if any person shall have in his or her possession, or under his or her control, ten or more false, forged, counterfeited or altered coupons, or other instruments of writing, purporting to be issued as aforesaid, knowing the same to be false, forged, counterfeited or altered, with intent to utter, pass or sell the same, and thereby to injure and defraud, or cause to be injured and defrauded, as aforesaid, such offender shall be guilty of felony, and on conviction shall be sentenced to pay a fine, not exceeding one thousand dollars, and undergo an imprisonment by separate or solitary confinement, at labor, not exceeding five years.

(1867, Jan. 7; P. L. 1369, § 2.)

See Corporations, § 65, and cross-references.

§ 115. If any person shall make, engrave or prepare, or cause, or procure, to be made, engraved, or prepared, or have in his custody or possession any plate, or substance, made, or prepared, after the similitude of any plate, or substance, from which any bond, note, coupon or other instrument, issued by the United States, or this, or any other State or territory, or any corporation, company or individual, shall have been printed, or taken, or wherefrom, or by means whereof, bonds, notes, coupons or other instruments for the payment of money, may be made, printed or prepared, after the similitude of such bonds, notes, coupons or other instruments, issued as aforesaid, with intent to use such plate or substance or cause or suffer the same to be used, in forging, or counterfeiting, any of the instruments aforesaid, or shall have in his or her possession, or custody, any paper adapted to the making of any such bonds, notes, coupons or other instruments similar to the paper on which said obligations, or evi-

dences of debt, shall have been issued, with intent to use such paper, or suffer the same to be used, in forging or counterfeiting such instruments, such offender shall be guilty of felony, and, on conviction, sentenced to pay a fine not exceeding one thousand dollars, and be imprisoned by separate or solitary confinement, at labor, not exceeding five years, and this act shall take effect from the time of its passage.

(1867, January 7; P. L. 1369, § 3.)

See § 114, ante.

XXXVIII. CORPORATE OFFICERS.

§ 138. If any person, being an officer, director, superintendent, manager, receiver, employe, agent, attorney, broker, or member of any body corporate or public company, or municipal or quasi-municipal corporation, shall as such receive or possess himself of any money or other property of such corporate or public company, municipal or quasi-municipal corporation, otherwise than in payment to him of a just debt or demand, and shall, with intent to defraud, omit to make or cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate, public company, municipal corporation or quasi-municipal corporation, he shall be guilty of a misdemeanor.

(1878, June 12; P. L. 196, § 1.)

See Corporations, § 17.

§ 139. The stockholders in any company formed in pursuance of the provisions of this act shall be jointly and severally liable, in their individual capacities, for all debts contracted by them for work and labor done or materials furnished for the opening, improving and preparing their said lands for mining purposes aforesaid: Provided however, That said companies may provide against contracting any such debts as aforesaid, by the adoption of a by-law requiring all payments for the purposes aforesaid to be cash; and in any such case, if any officer, agent or employe of any such company shall contract any debt for the purposes aforesaid, in violation of any such by-law, such officer, agent or employe shall be deemed guilty of a misdemeanor, and upon conviction thereof, in the court of quarter sessions of the peace of the county where such debt shall have been contracted, he, she or they shall be sentenced to pay a fine not less than the debt so contracted, nor more than double the same, and to undergo an imprisonment in the proper jail of such county not exceeding twelve months.

(1854, April 21; P. L. 437, § 5.)

§ 140. If any director, president, officer, agent or employe of any canal or railroad company shall be interested, directly or in-

directly, in furnishing material or supplies to such company, or in the business of transportation, as a common carrier, of freight or passengers over the works owned, leased, controlled or worked by such company, such director, president, officer, agent or employee shall be guilty of a misdemeanor, and on conviction thereof, in the court of quarter sessions of any county in which any overt act of such offense is committed, such person so offending shall be fined in any sum not exceeding two thousand dollars, and shall be imprisoned not more than two years, in the proper county jail, or in the penitentiary of the proper district.

(1883, June 4; P. L. 72, § 3.)

IV. EMBEZZLEMENT.

§ 236. If any person, being an officer, director, superintendent, manager, receiver, employee, agent, attorney, broker, or member of any bank or other body corporate, or public company, municipal or quasi-municipal corporation, shall fraudulently take, convert or apply to his own use, or the use of any other person, any of the money or other property of such bank, body corporate or company, municipal or quasi-municipal corporation, or belonging to any person or persons, corporation or association, and deposited therein, or in possession thereof, he shall be guilty of a misdemeanor.

(1878, June 12; P. L. 196, § 1.)

See Corporations, § 17.

LXV. FOREIGN CORPORATIONS.

§ 272. Any person or persons, agent, officer or employee of any such foreign corporation, who shall transact any business within this commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding thirty days, and by fine not exceeding one thousand dollars, or either, at the discretion of the court trying the same.

(1874, April 22; P. L. 108, § 3.)

"Corporation" defined. Const., art. XVI, § 13. See Foreign Corporations, § 3.

[Sales through a commission merchant are within this act. In re Worsted Co., 3 D. R. 428 (1894).]

LXVI. FORGERY.

§ 277. If any person shall falsely and fraudulently forge or counterfeit, or falsely and fraudulently be concerned in the forging and counterfeiting * * * the public and common seal of any * * * corporation, * * * or shall falsely or fraudulently utter and publish any instrument or writing whatever impressed with such forged and counterfeit seal, knowing the same to be forged and counterfeit, he shall be guilty

of a misdemeanor, and, on conviction, be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding seven years.

(1860, March 31; P. L. 382, § 170.)

§ 283. If any officer, director, superintendent, manager, receiver, employee, agent, attorney, broker, or member of any bank or other body corporate, or public company, municipal or quasi-municipal corporation, shall, with intent to defraud, destroy, alter, mutilate or falsify any of the books, papers, writings or securities belonging to the bank, body corporate or public company, municipal or quasi-municipal corporation, of which he is a director, officer, superintendent, manager, receiver, employee, agent, attorney, broker or member, or shall make or concur in the making of any false entry or any material omission in any book of accounts or other document, he shall be guilty of a misdemeanor.

(1878, June 12; P. L. 196, § 3.)

CXL. TAXES.

§ 608. If the said officers of any such limited partnership, joint-stock association or corporation, shall neglect or refuse to furnish the auditor-general, on or before the thirty-first day of December in each and every year, with the report and appraisement as aforesaid, as required by the twentieth section of this act, it shall be the duty of the accounting officers of the commonwealth to add ten per centum to the tax of said limited partnership, joint-stock association or corporation, for each and every year for which such report and appraisement were not so furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling accounts and collecting such taxes; if the officers of any such limited partnership, association, joint-stock association or corporation, or any of them, shall intentionally fail to comply with the requirements of the twentieth section of this act for three successive years, he or they shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine of five hundred dollars, and undergo an imprisonment not exceeding one year, or both or either, at the discretion of the court.

(1889, June 1; P. L. 420, § 22.)

See Taxation, § 2.

CXLIX. WAGES.

§ 630. Every individual, firm, association or corporation, employing wage-workers, skilled or ordinary, laborers engaged at manual or clerical work, in the business of mining or manufacturing, or any other employees, shall make payment in lawful money of the United States to said employees,

laborers and wage-workers, or to their authorized representatives; the first payment to be made between the first and fifteenth, and the second payment between the fifteenth and thirtieth of each month, the full net amount of wages or earnings due said employes, laborers and wage-workers upon the first and fifteenth instant of each and every month wherein such payments are made. And in case any individual, firm, corporation or association or other employer, shall refuse to make payment when demanded, upon the dates herein set forth, to wage-workers, laborers, or other employes employed by or with the authority of such individual, firm, corporation or association or other employer, the said individual, the members of the firm, the directors, officers and superintendents or managers of said corporation and associations, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not to exceed two hundred dollars.

(1891, May 20; P. L. 96, § 1.)

See Wages, §§ 21-23.

§ 631. It shall not be lawful for any person, firm, company, corporation or association, their clerk, agent, officer or servant in this State, to issue for payment of labor any order or other paper whatsoever, unless the same purports to be redeemable for its face value in lawful money of the United States, bearing interest at legal rate, made payable to employe or bearer, and redeemable, within a period of thirty days, by the person, firm, company, corporation or association giving, making or issuing the same; and any person, firm, company, corporation or association engaged in the business aforesaid, their clerks, agent, officer or servant, who shall issue for payment of labor any paper or order, other than the one herein specified, in violation of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars, in the discretion of the court, which shall go to the common school fund of the district wherein the crime shall have been committed.

(1881, June 29; P. L. 147, § 3.)

See Wages, § 24.

Escheat.

IV. ESCHEAT BY ALIENATION IN MORTMAIN.

Sec. 42. Lands held by assignees for benefit of creditors of corporations not to be forfeited.

43. Aliens authorized to hold real estate.

44. Property not to escheat by reason of alienage of grantor, or because grantor was a corporation.

46. Grantee of alien or foreign corporation, before inquisition, to hold indefeasible title.

47. Property of corporation of this State, with non-resident shareholders, not to escheat.

Sec. 49. Foreign insurance companies may hold and convey real estate.

50. Existing titles confirmed.

51. Transportation companies of other States may purchase offices, etc.

52. Certain foreign corporations authorized to hold real estate.

53. Title, heretofore acquired, confirmed.

§ 42. So much of the statutes of mortmain, and of any other disabling laws, acts or statutes, as tend to invalidate the titles to any lands, tenements or hereditaments, in this commonwealth, now held by assignees or trustees, for the benefit of creditors (of any corporation or corporations chartered by this commonwealth), be and the same is hereby repealed.

(1844, April 19; P. L. 313, § 1.)

See Corporations, § 97.

§ 43. Aliens may hereafter purchase and hold real estate in this State not exceeding in quantity five thousand acres, nor in net annual income twenty thousand dollars; and whensoever any alien or corporation in this State or elsewhere has acquired any real estate, without the authority of law or in excess of the limit of law, and shall have heretofore conveyed the same unto any person or persons authorized by law to hold the same, the title thereto shall be indefeasible by the commonwealth by any subsequent proceeding.

(1861, May 1; P. L. 433, § 1.)

See Foreign Corporations, § 9; Act No. 3, at p. 71.

§ 44. Where any conveyances of real estate in this commonwealth have been made by any alien or any foreign corporation, or corporations of another, or of this State, to any citizen of the United States, or to any corporation chartered under the laws of this commonwealth, and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizens or corporation, grantee as aforesaid, shall hold, and may convey such title and estate, indefeasibly as to any right of escheat in this commonwealth by reason of such real estate having been held by an alien or corporation not authorized to hold the same by the laws of this commonwealth.

(1876, May 8; P. L. 127, § 1.)

§ 46. (As amended June 15, 1897.) Where any conveyances of real estate in this commonwealth have been made by any alien, or any foreign corporation or corporations of another or of this State, or by the officers of any such corporation after dissolution or expiration of charter, since the ninth day of June, Anno Domini one thousand eight hundred and ninety-one, to any citizen of the United States or to any corporation chartered under the laws of this common-

wealth and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizens or corporations, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly, as to any rights of escheat in this commonwealth, by reason of such real estate having been held by an alien or corporation not authorized to hold the same by the laws of this commonwealth.

(1891, June 9; P. L. 249, § 1.)

See Foreign Corporations, § 4.

§ 47. No real or personal property, the title to which is or may be held by or in the name of any corporation of this State authorized by its charter or general law to hold the same, shall be escheated to the commonwealth, nor shall, in any judicial proceeding, any inference of any relation of trust or agency arise, by reason of the character or residence of the shareholders holding the whole or part of the capital stock of such corporation, nor because the beneficial ownership of said property, in whole or in part, is or has been in any person or persons, corporation or corporations, prohibited from holding the same.

(1887, June 2; P. L. 302, § 1.)

See Iron and Steel Manufacturing Companies, § 8.

§ 48. Said lands and property shall again become liable to escheat to this commonwealth, as already provided by law, if said corporation shall continue to hold said lands and property exceeding five years after the passage of this act, and an information in the nature of a quo warranto or other proper proceedings shall be filed or brought by this commonwealth to escheat the same: Provided, That no railroad, canal, or other transportation company of this State, nor any corporation, in whose name the title to other lands or property is held, shall plead or have the benefit of this act, unless it shall have previously filed with the secretary of this commonwealth a certificate in writing, signed by the president and secretary, and attested by the corporate seal of the company, stating that, at a regular or special meeting of said board of directors, a resolution, in pursuance to the consent of the stockholders, was adopted, accepting all the provisions of the seventeenth article of the Constitution of the State, and that all the powers of and privileges and limitations and restrictions mentioned therein shall be deemed and taken for all purposes to apply to said corporation. No such certificate shall be made by the officers aforesaid without the consent of the stockholders of the corporation, at a general or special meeting, first had and obtained: Provided further, That no railroad, canal or other transporta-

tion company shall plead or have the benefit of this act, unless it shall have previously filed, with the secretary of the State, its acceptance of all the provisions of article seventeen of the Constitution of this State, in manner and form as provided by law.

(1887, June 2; P. L. 302, § 2.)

§ 49. Hereafter it shall be lawful for all corporations and joint-stock companies or associations, chartered, created or existing under the laws of any other State, or of any foreign country, for the purpose of carrying on the business of insurance, to take, hold and enjoy in any part of this commonwealth, either in its corporate or associate name, or by a trustee or trustees, real estate and premises in which such corporation, joint-stock companies or associations shall carry on their said business, and to mortgage or convey the same, or any part thereof, and to lease any part of the buildings erected thereon, not requisite for the transaction of their said business.

(1881, June 1; P. L. 38, § 1.)

See Foreign Corporations, § 4.

§ 50. The title to any real estate in this commonwealth, now held by, or in trust for, any such corporation or joint-stock company or association, for the purposes aforesaid, is hereby confirmed, to the same effect as if the said real estate had been purchased, held or owned under the provisions of this act.

(1881, June 1; P. L. 38, § 2.)

See Foreign Corporations, § 10.

§ 51. It shall be lawful for any company incorporated under the laws of any other State of the United States, for the transportation of passengers and freight by steamboats or other vessels upon or over any river or waters between this State and any other State, to lease, erect or purchase offices, piers, warehouses and other buildings necessary for its business, and to hold in this State either in its corporate name, or by a trustee or trustees, real estate necessary for the transaction of its business; to lease, erect or purchase and maintain any riparian rights for the laying, landing or dockage of its steamboats or other vessels, and to mortgage and convey said real estate or any part thereof: Provided, That nothing herein contained shall be deemed to prevent or relieve any real estate held by any such corporation from being taxed in like manner as other real estate in this commonwealth. And the title of any real estate in this commonwealth now held by or in trust for any such corporation, for the purposes aforesaid, is hereby confirmed with the same effect as if said real estate had been purchased, held and owned under the provisions of this act: And provided further, That the provisions of this act shall apply only to companies that have been

Execution — Gen. Laws, §§ 8, 9, 51.

duly registered in the proper offices of this commonwealth, as required by law, for the purposes of taxation.

(1889, April 17; P. L. 35, § 1.)

§ 52. It shall and may be lawful for any company incorporated under the laws of any other State of the United States for the manufacture of any form of iron, steel, glass, lumber or wood, or for the conversion, dyeing and cleansing of cotton and other fabrics, or for the manufacture of cotton or velvet, or other fabrics, or for the manufacture of pyroligneous acids, acetate of lime and charcoal, by the process of destructive distillation, or the preparation of cattle hair for use, or for the manufacture of carbon dioxide and magnesia and the products thereof, and compositions, articles and apparatus from and in connection therewith, or for the manufacture of extracts out of wood, bark, leaves and roots, or any other extract, for tanning, cleansing, dyeing or other purposes, to erect and maintain buildings for such manufacturing purposes and for offices and salesrooms, or either, within this commonwealth, and to take, have and hold real estate, not exceeding one hundred acres, necessary and proper for such manufacturing purposes and for offices, dwellings and salesrooms, or either, and to mortgage, bond, lease or convey the same, or any part thereof: Provided, That nothing herein contained shall be deemed to prevent or relieve any real estate taken and held by any such foreign corporation, under the provisions of this statute, from being taxed in like manner with other real estate within this commonwealth: And providing further, That no such foreign corporation shall be entitled to employ any greater amount of capital in such business in this State than the same kind of corporations organized under the laws of this State are entitled to employ: And provided further, That every such foreign corporation doing business as aforesaid, in this commonwealth, shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this State, and every such foreign corporation, taking the benefit of this act, shall make the same returns to the auditor-general that are required by law to be made by corporations of this State under similar circumstances.

(1891, April 30; P. L. 39, § 1.)

See Foreign Corporations, §§ 4, 8, 9.

§ 53. The title to any real estate in this commonwealth now held by or in trust for any such foreign corporation, for the purpose aforesaid, is hereby confirmed to the same effect as if the said real estate has been purchased, held or owned, under the provisions of this act.

(1891, April 30; P. L. 39, § 2.)

See Foreign Corporations, § 10.

Execution.

II. Liability to Execution.

- Sec. 8. Stocks in corporation liable to execution.
9. Stocks may be sold, subject to debts due corporation.

VI. Attachment Execution.

- Sec. 51. Proceedings to levy on stock of defendant in the name of another.
52. Attachment to issue, upon filing affidavit and recognizance.
53. Proceedings against stock held by defendant, and claimed by a third person.
54. Stock held in name of another may be attached before judgment; after judgment, stock to be sold on fieri facias.

XI. Execution against Corporations.

- Sec. 182. Petition for citation of officers to answer interrogatories, touching the effects of corporations.
183. Form of execution against corporations.
184. Method of distribution.
185. Attachment executions against corporations other than municipal.
186. Purchaser to hold real estate discharged from the right of forfeiture.
187. Fieri facias against corporate property and franchises.
188. Levy may extend to other counties.

II. LIABILITY TO EXECUTION.

§ 8. The stock owned by any defendant in any body corporate, * * * shall be liable to execution, like other goods or chattels, subject nevertheless to all lawful claims thereupon, of such body corporate, * * *

(1836, June 16; P. L. 755, § 22.)

See §§ 9 et seq., post; § 105, post.

§ 9. The stock of any body corporate, owned by any individual or individuals, body or bodies politic or corporate, in his, her, its, or their own names, shall be liable to be taken in execution and sold in the same manner that goods and chattels are liable in law to be so taken and sold, subject nevertheless to any debt due by any holder or holders of such stock to the company or body corporate.

(1819, March 29; 7 Sm. L. 217, § 2.)

VI. ATTACHMENT EXECUTION.

§ 51. The proceedings to levy an execution upon stock debts, and deposits of money belonging or due to the defendant, shall be as follows, to-wit: In the case of stock, if it shall be held in another name than that of the real owner thereof, the plaintiff shall file in the office of the prothonotary of the court an affidavit, stating that he verily believes such stock to be really the property of the defendant, and shall enter into a recognizance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge, to the party to whom such stock shall really belong, in

case such stock should not be the property of the defendant.

(1836, June 16; P. L. 755, § 32.)

Proceedings against stock claimed by third person. § 53, post.

§ 52. Upon the filing of such affidavit and recognizance, it shall be lawful for the prothonotary to issue process, in the nature of an attachment, against such stock, with a clause of summons to the person in whose name the same may be held, in the nature of a writ of seire facias against garnishees in a foreign attachment, and thereupon the plaintiff may proceed to judgment, execution and sale of the said stock in the manner allowed in cases of foreign attachment against personal estate.

(1836, June 16; P. L. 755, § 33.)

§ 53. The like proceedings may be had against stock owned by a defendant, and held in his own name, without the affidavit and recognizance aforesaid; and if any person shall claim to be the owner of such stock, he may, upon filing an affidavit that the stock is really his property, and entering into a recognizance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge to the plaintiff, if such stock should really belong to the defendant, the court shall admit him to become a party upon the record, and take defense, in like manner as if he were made garnishee in the writ.

(1836, June 16; P. L. 755, § 34.)

See § 51, ante.

§ 54. Whenever any plaintiff or creditors shall file an affidavit with the prothonotary of the court, alderman or magistrate, in which or before whom such plaintiff or creditors has instituted, or is about to institute a suit, stating that he verily believes such stock to be really and bona fide the property of the debtor against whom such suit has been, or is about to be brought, and also shall enter into a recognizance with two sufficient sureties, conditioned for the payment of such damages, as such court, alderman or magistrate may adjudge to the party or parties to whom such stock shall really belong, in case such stock should not be the property of such debtor, it shall and may be lawful for such court, alderman or magistrate to cause to be issued process in the nature of a foreign attachment against such stock, and to summon as garnishee the person or persons in whose name or names the same shall be held, and proceed against the said stock, and such garnishee, in all respects in the same manner as by the laws of this commonwealth proceedings now are or hereafter may be prescribed in cases of foreign attachments against personal estate, and upon judgment being had in favor of

the plaintiff in any such suit, execution may issue immediately for the sale of such stock, in the same manner that goods and chattels are sold on writs of fieri facias; Provided, That in case of a judgment before a justice of the peace or alderman, where the amount in controversy shall exceed five dollars and thirty-three cents, an appeal shall be allowed to the court of common pleas, agreeably to the same rules and regulations now or hereafter to be prescribed for granting appeals in other cases cognizable before a justice of the peace.

(1819, March 29; P. L. 217, § 3.)

See § 187, post.

XI. EXECUTION AGAINST CORPORATIONS.

§ 182. Whenever a judgment may be rendered in any court of record against any private corporation within this commonwealth, in any civil action, and a writ of fieri facias shall be issued on such judgment, and the sheriff to whom the same may be directed shall make a return of nulla bona on the same, it shall and may be lawful for the plaintiff in such action to apply by petition and affidavit to the court in which such judgment has been rendered, stating that no property of the defendants can be found on which an execution may be levied, and that the party making the application verily believes that the effects of the corporation are concealed for the purpose of avoiding the payment of their debts, whereupon the said court may issue a citation, directed to the president, secretary, treasurer, or other officers and members of the said corporation, commanding him or them to appear in court on a day certain, and answer such interrogatories as may be put to them touching the effects of the corporation, which citation shall be served by the sheriff, and it shall be the duty of the plaintiff to file interrogatories to be put to such officer or member, at least fifteen days before the return day of such citation, in the office of the prothonotary of such court, and the person or persons to whom the said citation shall be directed shall, on or before the return day thereof, file his or their answers to such interrogatories, upon oath or affirmation, in the office of the prothonotary, and if any person to whom such citation may be directed shall neglect or refuse to file his answers as aforesaid, or shall file answers which in the opinion of the court shall be unsatisfactory, it shall be lawful for the court to issue an attachment for contempt against the person so refusing to answer or answering unsatisfactorily, and if upon the answers to such interrogatories it shall appear that any effects of the said corporations are in the possession or power of any member of the corporation, or of any other person or persons, it shall and may be lawful for the court to issue an order in the

Execution against corporations — Gen. Laws, §§ 183-185.

nature of an order of sequestration, which, being served by the sheriff on the person or persons in whose possession or power such effects are alleged to be, shall have the same force and effect as if he or they had been summoned as garnishees in a foreign attachment, and the like proceedings shall thereafter be had against him or them as may be had against such garnishees after judgment rendered against the defendant in a foreign attachment, and any debtor of the said corporation may plead such sequestration, and proceedings against him, in bar of any action brought by such corporation, exactly as the garnishee in a foreign attachment may plead the proceedings in the same, in bar of an action by the defendant in the same.

(1828, April 14; P. L. 439, § 1.)

[If the answers are insufficient, the defendant should have an opportunity to perfect them. It is, therefore, the proper practice to file exceptions to the sufficiency of the answers. *Gude v. Ins. Co.*, 15 W. N. C. 438. In *Carondelet Co. v. Ins. Assn.*, 15 W. N. C. 125, held, that the plaintiff could attach for contempt at once, without excepting to the answer.

An insolvent corporation may prefer a creditor by a confession of judgment, and where no disability is imposed upon a foreign corporation by its charter, the prohibition of such a preference by general enactment of the State where the corporation is chartered can have no extraterritorial effect. *Palpout Co. v. Watch Co.*, 161 Penn. St. 17; s. c., 28 Atl. Rep. 1003.

It is not unlawful for an insolvent corporation, foreign or domestic, to confess a judgment to a bona fide creditor not an officer or member of it. *Bank v. Columbus Co.*, 15 Penn. C. C. 357.

Receivers of an insolvent corporation have nothing to do with stock and internal management of company; they are not necessary parties to a proceeding against the company by mandamus brought by a stockholder to compel an inspection of its stock. *Commonwealth v. R. R. Co.*, 3 Penn. Dist. Rep. 115.]

§ 183. All executions which shall be issued from any court of record against any corporation, not being a county, township, or other public corporate body, shall command the sheriff, or other officer, to levy the sum recovered, together with the costs of suit, of the goods and chattels, lands and tenements of such corporation, and such execution shall be executed in the manner following, to-wit:

I. The officer charged with the execution of such writ shall go to the banking-houses, or other principal office of such corporation, during the usual office hours, and demand of the president, or other chief officer, cashier, treasurer, secretary, chief clerk, or other officer, having charge of such office, the amount of such execution, with legal costs.

II. If no person can be found on whom demand can be made as aforesaid, or if the amount of such execution be not forthwith paid, in lawful money, after demand as aforesaid, such officer shall seize personal property of said corporation sufficient to satisfy the debt, interest and costs, as aforesaid.

III. If the corporation against which such execution shall be issued be a banking company, and other sufficient personal property cannot be found, such officer shall take so much of any current coin, of gold, silver, or copper, which he may find, as shall be sufficient to satisfy the debt, interest and cost, as aforesaid.

IV. If no sufficient personal property be found, as aforesaid, such officer shall levy such execution upon the real estate of such corporation, and thereupon proceed in the manner provided in other cases for the sale of land upon execution.

(1836, June 16; P. L. 755, § 72.)

[A turnpike company, in which the State holds stock, is not a public corporation within this exception. *Turnpike Co. v. Wallace*, 8 Watts, 316; *City v. McAboy*, 74 Penn. St. 249. Purchasers at sheriff's sales of the real estate of corporations obtain possession under the act of 1836, June 16; P. L. 755, §§ 105-108, as in other cases. *Oakland Co. v. Keenan*, 56 Penn. St. 198. Corporate property, subject to levy and sale on an ordinance fieri facias under this section, is its general property, including therein such real and personal property as is not immediately and reasonably necessary for the exercise of its franchises; and also its gold, silver and proper coin, if it is a banking corporation. *Bank v. Mfg. Co.*, 13 W. N. C. 174; *Covey v. R. R. Co.*, 3 Phila. 173.

Proceeds of levy and sale of such property of an insolvent corporation must be distributed according to priority of lien, and not as in insolvency. *Bank v. Mfg. Co.*, 13 W. N. C. 174; *Fairmount Coal Co.'s App.*, 14 Id. 214.]

§ 184. [The court shall, upon the awarding any such writ, appoint a sequestrator to execute the same, and to take charge of the property and funds taken or received by virtue of such writ.] and to distribute the net proceeds thereof among all the creditors of such corporation, according to the rules established in the case of the insolvency of individuals.

(1836, June 16; P. L. 755, § 74.)

[The above method of distribution is still in force as to the distribution of the proceeds of corporate property sold under the fieri facias authorized by the act of 1840, April 7; P. L. 58, § 1, though the rest of the section has been repealed by that act. *Bayard's App.*, 72 Penn. St. 453; *Hopkin's App.*, 90 Id. 63; s. c., 8 W. N. C. 33.

Upon sale of real estate by a receiver, the court does not possess the inherent power to deprive judgment creditors of their lien by directing the sale free from the lien of judgment. *Lebanon Co.*, 3 Penn. Dist. Rep. 260.]

§ 185. So much of the act of assembly passed June 16, 1836, entitled "An act relating to executions," as provided for the levy and recovery of stock, deposits and debts due to defendants, by process of attachment and scire facias, is hereby extended to all cases of attachments to be issued upon judgments against corporations (other than municipal corporations), and from and after the passage of this act all such process, which hereafter may be issued, may be proceeded in to final judgment and exe-

Execution against corporations — Gen. Laws, §§ 186-188.

cution, in the same manner, and under the same rules and regulations, as are directed against corporations, by the provisions of the act of June 16, 1836, relating to executions; and so much of the thirty-sixth section of the act of June 16, 1836, as requires service of the attachment on any defendant, be and the same is hereby repealed except where the defendant is a resident of the county in which the attachment issued. (1845, March 20; P. L. 188, § 4.)

[An attachment execution against a railroad company cannot be levied on money in hands of ticket agents, arising from sale by them of tickets to passengers. *Fowler v. R. R. Co.*, 35 Penn. St. 22.

It lies against an insolvent company; and will bind its funds in the hands of a banker, with whom they were deposited subject to call by its treasurer. *Reed v. Penrose*, 36 Penn. St. 214.

Attachment executions did not lie against corporation under the act of 1836, June 16; P. L. 755. *Ridge Co. v. Peddle*, 4 Penn. St. 490; *Navigation Co. v. Ledlie*, 1 Clarke, 498.]

§ 186. In all cases where the real estate of any corporation shall be sold at sheriff's sale, for the payment of bona fide debts, the purchasers shall receive titles discharged from any right of forfeiture to the commonwealth, by reason of misnomer, limitation or defect of power in the said corporation to purchase and hold said lands; and the purchase money shall be distributed according to priority among the lien creditors, as in other cases.

(1844, April 30; P. L. 532, § 2.)

See Corporations, § 109.

[Proceeds of corporate real estate sold at sheriff's sale for the payment of debts are to be distributed among its lien creditors according to priority of lien, and not pro rata. *Bank v. Coke Co.*, 137 Penn. St. 601; s. c., 20 Atl. Rep. 870.]

§ 187. In addition to the provisions of the [seventy-second] section of the act of June 16, 1836, relating to executions, and in lieu of the provisions or proceedings by sequestration under said act, plaintiff or assigns, in any judgment against any corporation not excepted by said act, may have execution [by] fieri facias issued from the court wherein said judgment is entered, which shall command the sheriff or other officer to levy the sum of said judgment, with interest and costs of suit of any personal, mixed or real property, franchises and rights of such corporation, and thereupon proceed and sell the same, excepting lands held in fee, which latter shall be proceeded against and sold in the manner provided in cases for the sale of real estate; the proceedings on judgment under the aforesaid provisions of this supplement shall be without stay of execution: Provided, That the purchaser or purchasers of any or all of said property, real, personal or mixed, together with the franchises and rights, shall take the same clear of all incumbrances,

excepting any mortgage or mortgages which may legally exist at the time of levy thereupon, the lien of which shall not be affected in any manner by said sale.

(1870, April 7; P. L. 58, § 1.)

See § 54, ante.

[If the corporation is incorporated by the joint act of this and another State, the portion of it located in this State cannot be sold on a fieri facias. *Graham v. Canal Co.*, 3 Pitts. 341.

The exception as to "lands held in fee" extends to lands dedicated to corporate purposes and essential to corporate franchise, which must be sold under act of 1836. *Greensburg Co. v. Irwin*, 162 Penn. St. 78; s. c., 29 Atl. Rep. 274.

The process authorized by this act cannot be used for the collection of a judgment on a mechanic's lien against a corporation. *Guest v. Water Co.*, 142 Penn. St. 610; s. c., 21 Atl. Rep. 1001; s. c., 28 W. N. C. 285.

Where the corporate property and franchises are sold under an ordinary fieri facias, the right of objection to the irregularity may be waived by acquiescence and lapse of time. *Lusk's App.*, 108 Penn. St. 152.

The franchises of a corporation, and its property in actual use for the purposes described in its charter must be levied upon and sold together as an entirety. *Longstreth v. R. R. Co.*, 11 W. N. C. 309; *Patrol v. Boyd*, 19 Phila. 266.

The above act repeals the provisions of the act of 1836, June 11; P. L. 755, §§ 73-75, authorizing sequestration. *R. R. App.*, 70 Penn. St. 355; *Bayard's App.*, 72 id. 453.

Patent rights belonging to an insolvent corporation may be sold on a fieri facias, under this act. *Flagg v. Farnsworth*, 12 W. N. C. 500; s. c., 16 Phila. 57.

Proceedings or a fieri facias on a judgment obtained on bonds secured by a mortgage on all the property and franchises of a corporation will be restrained on the application of the trustee; for the lien of mortgages cannot be affected by a sale on a fieri facias under this act. *Paul v. Hassall*, 18 Phila. 621.

The sale, if allowed, could not pass title. *Commonwealth v. R. R. Co.*, 122 Penn. St. 306; s. c., 15 Atl. Rep. 448; s. c., 22 W. N. C. 413.

Demand at the principal office of the corporation, under section 72 of the act of 1836, June 16; P. L. 755; prior to the ordinary fieri facias, is a prerequisite to execution under this act. *Hassall v. Canal Co.*, 2 Penn. C. C. 147.

An ordinary fieri facias must first issue under the seventy-second section of the act of 1836, June 16; P. L. 755, and be returned unsatisfied in whole or in part, before the fieri facias authorized by this act can issue. *Fox v. R. R. Co.*, 8 Phila. 639; *Philadelphia R. R. Co.'s App.*, 70 Penn. St. 355; *Flagg v. Farnsworth*, 12 W. N. C. 500; s. c., 16 Phila. 57; *Bank v. Mfg. Co.*, 13 W. N. C. 174; *Guest v. Water Co.*, 142 Penn. St. 610; s. c., 21 Atl. Rep. 1001; s. c., 28 W. N. C. 285.]

§ 188. By virtue of any execution issued under this act the levy may extend to the property, franchises and rights of said corporation, in any and every county of this commonwealth, wherein the same may be, and shall be indorsed on said writ; the levy and sale thereof shall be as effective as though all said property, franchises and rights were located, used, levied upon and sold in the county wherein said writ of execution was issued, and shall fully divest the defendants of all interest therein.

(1870, April 7; P. L. 58, § 2.)

See § 8, ante.

Foreign corporations — Gen. Laws, §§ 1-4.

Foreign Attachment.

II. WHEN WRIT MAY ISSUE.

Sec. 4. Against a foreign corporation.

§ 4. A writ of attachment, in the form aforesaid,* may be issued against any foreign corporation, aggregate or sole, and the proceedings aforesaid may be had thereon, so far as the case will permit; and such attachment and proceedings may be dissolved as aforesaid, upon an appearance by an attorney, and a deposit made as aforesaid, or security given for the debt or demand in lien thereof, in such sum and form as the court from which such writ issues shall direct.

(1836, June 13; P. L. 568, § 76.)

See Corporations, § 83, at p. 32.

["Foreign corporation," as used here, refers to corporations organized in other States. *Harley v. Charleston Steam Packet Co.*, 2 Miles, 249.

Forfeiture of the charter of a foreign corporation by judicial decree, before judgment against it, dissolves on attachment. *Farmers & Mechanics' Bank v. Little*, 8 Watts & Serg. 207.

Above section is not affected by section 83 of the Corporation Law. *Beal & Simmons v. Toby Valley Supply Co.*, 2 D. R. 671.]

Foreign Corporations.

I. General Regulations.

- Sec. 1.** Offices and agents within State.
2. Statement to be filed with secretary of commonwealth.
3. Penalties for non-compliance.
4. Power to hold real estate regulated.

II. How Foreign Corporations may Become Domestic.

1. PROCEEDINGS.

- Sec. 5.** What corporations may become domestic.
6. Proceedings after filing of certificates.

2. POWERS OF SUCH CORPORATIONS.

- 7.** Restrictions on powers of original corporation.

III. Specific Powers.

- Sec. 8.** May purchase real estate at judicial sales, under restrictions.
9. To have rights of lien creditors at such sales.
10. Title to real estate heretofore acquired, confirmed.

IV. Suits against Foreign Corporations.

- Sec. 11.** Proceedings in suits against foreign corporations.
12. Service of process on foreign corporations.
13. Judgments or awards against foreign corporations.

I. GENERAL REGULATIONS.

Section 1. From and after the passage of this act no foreign corporation shall do any

*Section 1 gives the form of the writ.

business in this commonwealth until said corporation shall have established an office or offices and appointed an agent or agents for the transaction of its business therein. (1874, April 22; P. L. 108, § 1.)

See Const., art. XVI, § 5. Penalty for violation of this act. See Crimes, § 272.

[What constitutes a doing of business so as to subject a foreign corporation to taxation. *Commonwealth v. Standard Oil Co.*, 101 Penn. St. 145. See *Campbell v. Herring*, 139 Id. 475; s. c., 20 Atl. Rep. 1061; *Kilgore v. Smith*, 122 Penn. St. 48; s. c., 15 Atl. Rep. 698; *Williams v. Heinmeister*, 3 Luz. Leg. Reg. 490.

A contract for supplies will not be awarded by the State officials to a corporation not complying with this act. In re *Specialty Co.*, 12 Penn. C. C. 44.]

§ 2. It shall not be lawful for any such corporation to do any business in this commonwealth until it shall have filed in the office of the secretary of the commonwealth a statement, under the seal of said corporation, and signed by the president or secretary thereof, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein; and the certificate of the secretary of the commonwealth, under the seal of the commonwealth, of the filing of such statement, shall be preserved for public inspection by each of said agents, in each and every of said offices.

(1874, April 22; P. L. 108, § 2.)

See Corporations, § 10. Secretary to publish list of charters. See Corporations, § 130.

[Under above act, a foreign corporation must file its certificate with secretary of the commonwealth, even though it does its business and sells its goods through traveling solicitors instead of at a particular place. *Gould's Mfg.*, 14 Penn. C. C. 170.

A foreign corporation which consigns its goods to the commission merchant in this State, who sells them for the corporation, is doing business in this commonwealth and should file the statement with secretary of commonwealth as required by act of April 22, 1874. *Nonantum Worsted Co.*, 15 Penn. C. C. 125.]

§ 3. Any person or persons, agent, officer or employee of any such foreign corporation, who shall transact any business within this commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding thirty days, and by fine not exceeding one thousand dollars, or either, at the discretion of the court trying the same.

(1874, April 22; P. L. 108, § 3.)

See Crimes, § 272.

§ 4. No corporation, other than such as shall have been incorporated under the laws of this State, nor shall any foreign govern-

Foreign corporations may become domestic — Gen. Laws, §§ 5-7.

ment, potentate or power, hereafter acquire and hold any real estate within this commonwealth directly, in the corporate name, or by or through any trustee or other device whatsoever, unless specially authorized to hold such property by the laws of this commonwealth: Provided, That the residence without the limits of this State of a portion of the members of any religious, literary, charitable or beneficial society or association otherwise qualified to hold real or personal estate within this State, shall not incapacitate such society or association from taking and holding such property, not exceeding the value limited by law.

(1855, April 26; P. L. 328, § 5.)

See Escheat, §§ 46, 49, 52. May purchase real estate, when. §§ 8-10.

[Foreign corporation may sue to enforce a loan secured by mortgage, but not decided as to ejectment. *Leisure v. Ins. Co.*, 19 Penn. St. 491; *American Co. v. Bank*, 8 W. N. C. 430; *Steamboat Co. v. McCutcheon*, 13 Penn. St. 13.

Above act does not prohibit foreign corporations from holding stock of Pennsylvania corporations owning real estate. *White v. Ryan*, 15 Penn. C. C. R. 170.]

II. HOW FOREIGN CORPORATIONS MAY BECOME DOMESTIC.

1. PROCEEDINGS.

§ 5. Corporations, created by or under the laws of any other State, doing business in this State, and in which three or more of the stockholders are citizens of this State, and which are embraced within corporations of the second class defined in section (2) of an act, approved April 29, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," may become corporations of this State, under the provisions of said last-mentioned act, by preparing, having approved and recorded, a certificate in which shall be stated:

I. The name of the corporation.

II. Its purpose.

III. The place or places where its business is to be transacted.

IV. The term for which it is to exist.

V. The names and residences of the stockholders, and the number of shares held by each.

VI. The number of its directors, and the names and residences of those elected for the current year.

VII. The amount of its capital stock, and the number and par value of the shares into which it is divided.

VIII. The legislation under which it was originally created.

IX. Its financial condition at the date of the certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any.

Said certificates shall be accompanied by a certificate, under the seal of the corporation, showing the consent of a majority in interest of such corporation to such appli-

cation for a charter, and to a renunciation of its original charter, and of all privileges not enjoyed by corporations of its class, under the laws of this commonwealth.

(1881, June 9; P. L. 89, § 1.)

See Corporations, § 6.

[Advertisement and notice, as required by act of 1874, is not necessary under this act. In re *Mfg. Co.*, 1 D. R. 801.

Legislature recognizes a foreign corporation doing business in this State as a corporation already in existence; hence no notice is required to be given of such corporation's intended application under this act; neither is it necessary to aver in the application that ten per cent. of capital stock has been paid in cash, as required by act of 1874. In re *Mfg. Co.*, 1 D. R. 801; s. c., 12 Penn. C. C. 165; see *Real v. Supply Co.*, 13 id. 273.

It is no defense to an action by a foreign corporation to recover a subscription to its stock, that plaintiff is a foreign corporation attempting to carry on business in this State without having filed a statement in office of secretary of State as required by above statute. *Iron Co. v. Vanderbilt*, 164 Penn. St. 572.]

§ 6. Said certificates shall be acknowledged by at least three of the directors of said corporation, before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and said directors shall also make and subscribe an oath or affirmation before him, to be indorsed on the said certificate, that the statements contained therein are true. The said certificate shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form, and within the purposes named for corporations of the second class in the said section of said act of April 29, 1874, before mentioned, he shall approve thereof, and indorse his approval thereon, and direct letters patent to issue, in the usual form, incorporating said stockholders and their successors into a body politic and corporate in deed and in law, by the name chosen; and the said certificate shall be recorded, in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish the auditor-general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation; the said original certificate, with all its indorsements, shall then be recorded in the office for the recording of deeds in and for the county where the chief operations are to be carried on.

(1881, June 9; P. L. 89, § 2.)

See Corporations, § 6.

2. POWERS OF SUCH CORPORATION.

§ 7. From the date of said letters-patent said corporation shall be and exist as a corporation of this commonwealth, under the provisions of law regulating corporations of

Foreign corporations, powers, and suits against — Gen. Laws, §§ 8-11.

its class and of its charter; and all of the rights, privileges, powers, immunities, lands, property and assets, of whatever kind or character the same may be, possessed and owned by the original corporation, shall vest in, and be owned and enjoyed by, the said corporation so created, as fully and with like effect, as if its original charter had remained in force, save as by general law and said certificate expressly stated otherwise; and all suits, claims and demands by said corporation, in existence at the date of said new charter, shall and may be sued, prosecuted and collected, under the laws governing the said corporation prior to its new charter, and claims and demands of every nature and character in existence at the date of said new charter may be collected from and of said new chartered corporation, as fully and with like effect as if no change had taken place.

(1881, June 9; P. L. 89, § 3.)

See Corporations, § 16 et seq. Powers defined. See Iron and Steel Manufacturing Companies, § 1.

III. SPECIFIC POWERS.

§ 8. Any corporation, incorporated and existing under the laws of any other State of the United States and doing business in this State, and having therein one or more known places of business, and an authorized agent or agents, upon whom process may be served, is hereby authorized and empowered to purchase, in its corporate name, at any sheriff's or other judicial sale, any real estate upon which such corporation may have or hold any mortgage, judgment or lien, and to hold, lease or sell and convey the same at pleasure to any person or persons, corporation or corporations, whatsoever; Provided, however, That any real estate, so purchased as aforesaid, shall be sold and conveyed within ten years from the date of such purchase.

(1887, May 23; P. L. 176, § 1.)

See Const., art. XVI, § 6; Escheat, § 52. Power to hold real estate, § 4, ante. See Corporations, § 117.

§ 9. All the rights and privileges and duties now by law accorded to and imposed upon lien creditors, purchasing at judicial sales, be and the same are hereby extended to said corporations so purchasing as aforesaid.

(1887, May 23; P. L. 176, § 2.)

See Escheats, § 43.

§ 10. The title to any such real estate in this commonwealth now held by or in trust for any such foreign corporation, and ac-

quired at any judicial sale, is hereby confirmed, to the same effect as if the said real estate had been purchased, held or owned under the provisions of this act.

(1891, June 9; P. L. 252, § 1.)

See Corporations, § 109; Escheat, §§ 50, 53.

IV. SUITS AGAINST FOREIGN CORPORATIONS.

§ 11. In all cases where any company has been incorporated by this commonwealth, and the principal office for the transaction of business thereof shall be located out of this State, or where the president, treasurer, cashier or other principal officer of such company shall reside out of this State, it shall be lawful to sue such company in any county of this State where the works of such company shall be located, or adjoining thereto, or where any director, manager or other officer of such company shall reside; and service of legal process upon such director, manager or other officer, shall be valid and effective upon said company; and such company shall be taken to be both in law and in equity for every purpose of legal proceeding, to be located in this State; and shall also be liable to the writs of quo warranto, mandamus, attachment and execution; and service of such writ upon any manager, director or other officer of such company, shall be, to all intents and purposes, as effective as if served upon the president of such company and he resident of this State, and as if the locality of such company's office were within this State; and any property of any description of such company, which would be liable to attachment or execution, if the same were located in this State, shall be taken to be in this State for such purpose; and shall be liable to levy and sale, in the same manner as if the officers of said company were located in the county of this State, in which the same is made liable to be sued by the provisions of this act.

(1847, March 15; P. L. 361, § 2.)

See Corporations, § 80.

[A foreign attachment may issue against a foreign corporation as garnishee. *Pierce v. McLaughlin*, 28 W. N. C. 311.]

Under above section, acts of May 25, 1881; P. L. 32; and June 21, 1885; P. L. 159, not conflicting, where principal office of company is without the State, the writ of alternative mandamus may issue from the county where its works are situate, and be served upon a director residing in an adjoining county. *Commonwealth v. R. R. Co.*, 138 Penn. St. 58; affirming 7 Penn. C. C. 407; see *Bed v. Supply Co.*, 13 id. 273.

A writ of foreign attachment lies at the suit of a salesman, and resident of this State, against a foreign corporation for a debt due him by the corporation; and this, though property attached be in the hands of receivers. Our courts will not recognize claims of a foreign receiver where such claims conflict with rights of citizens of this State. *Lett v. Thurber*, 15 Penn. C. C. R. 666.]

§ 12. In any case when any insurance company or other corporation shall have an agency or transact any business in any county of this commonwealth, it shall and may be lawful to institute and commence an action against such insurance company or other corporation in such county, and the original writ may be served upon the president, cashier, agent, chief or any other clerk, or upon any directors or agent of such company or corporation within such county, and such service shall be good and valid in law to all intents and purposes. (1851, April 8; P. L. 354, § 6.)

See Const., art. XVI, § 5. Service of process. See Corporations, § 84.

§ 13. In all suits or actions hereafter to be brought in any court of record of this commonwealth, against any foreign corporation or body corporate, not holding its charter under the laws of this commonwealth, every judgment, verdict or award rendered against such corporation, shall be final and conclusive, unless the said defendants, in addition to the usual proceedings in cases of appeal, shall give good and sufficient bail in the nature of bail absolute, for the payment of such sum or sums as shall finally be adjudged to be due to the plaintiff or plaintiffs, together with interest and costs thereon; and in the commencement of any suit or action against any such foreign corporation, process may be served upon any officer, agent or engineer of such corporation, either personally, or by copy, or by leaving a certified copy thereof at the office, depot or usual place of business of said corporation; and such service shall be good and valid in law to all intents and purposes.

(1849, March 21; P. L. 216, § 3.)

See Corporations, § 84; Appeals, § 41.

[A return need not aver that the defendant is a foreign corporation. *Bank v. R. R. Co.*, 8 W. N. C. 252.

A return of service on a foreign corporation is sufficient, if it simply state that service was made upon an agent of the corporation, without more, and evidence will not be allowed for the purpose of showing its insufficiency upon a rule to set it aside. *Kalbach v. Ry. Co.*, 11 W. N. C. 174.

The following return is good under this act: "Served a true and attested copy of the within writ personally on A. B., an agent of the within named defendants, and made known to him the contents thereof." *Patton v. Ins. Co.*, 1 Phila. 396.

Service on a foreign corporation, under this act, is good though it has not been registered as required by the act of 1874, April 22, P. L. 108; and by the Constitution of 1874, art. XVI, § 5, and is, therefore, illegally transacting business in this State. *Hagerman v. Empire Co.*, 97 Penn. St. 534; s. c., 10 W. N. C. 491.

A return of service, which omits to set forth the character of the agent served, is prima facie evidence of a good service; but this presumption may be rebutted by proof to the contrary. *Id.*

A return may not aver that defendant is a foreign corporation. *Bank v. R. R. Co.*, 8 W. N. C. 252.

Service upon the president of a foreign corporation, at his dwelling-house, by leaving a copy of the summons with an adult member of the family, is good. *Johnson v. Postling Co.*, 13 Penn. C. C. 96.

The following return was held sufficient under this act: "Served by delivering a true and attested copy of the within writ to A., the secretary (the corporation defendant), and by making known to him the contents thereof." *Benwood Works v. Hutchinson*, 101 Penn. St. 359.

A foreign corporation having no office or place of business in this State and not doing business therein cannot be subjected, without its consent, to the jurisdiction of this State, by service upon its president or other officer, while he is temporarily within this State for his own purposes. *Branson v. Trump*, 16 Phila. 112; s. c., 40 Leg. Int. 5; *Boyle v. Iron Co.*, 32 P. L. J. 401.

The act applies only to the case of a foreign corporation having an office or transacting business within this State. *Phillips v. Library Co.*, 141 Penn. St. 622; *Nash v. Reeder*, 1 M. 78.

A foreign corporation qualified to do business in this State may be made a garnishee in an execution attachment; and in such case service made as prescribed by this act is valid. *Barr v. King*, 96 Penn. St. 485.

A return by a sheriff, stating that service was made upon a foreign corporation, by giving the superintendent, agent and chief manager (naming him) of the defendant, at its office in the county, a true and attested copy of the summons, and making known to him the contents thereof, is good under this act. *Wintermute v. R. R. Co.*, 5 Penn. C. C. 648; see, also, *App. of Central R. R. Co. of N. J.*, 102 Penn. St. 40; s. c., 11 W. N. C. 429.

Where receiver of a foreign corporation, appointed by court of another State, has once obtained rightful possession of personal property, courts of this State will recognize his possession. *Lett v. Kirkpatrick*, 15 Penn. C. C. R. 212.

Where receiver has been appointed in this State for property of a foreign corporation, and Pennsylvania creditors have been paid, the assets will be awarded to a receiver appointed in the home State of the corporation, in order that they may be deposited after payment of all creditors, by the latter receiver, to the stockholders. *Kean v. Iron Hall*, 15 Penn. C. C. 194.]

Iron and Steel Manufacturing Companies.

I. General Provisions.

- Sec. 1. General corporate powers defined.
2. Amount of land to be held.
3. Issuance and disposal of bonds.
4. Annual statement to be laid before the stockholders.
5. Power to appropriate streams.
6. Effect of incorporation.
7. Power to hold stock in other corporations.
8. Stockholders: corporations already formed may apply for benefit of act.
9. Individual liability of stockholders.
10. Partial repeal.

II. Foreign Corporations.

- Sec. 11. Powers of foreign corporations.
12. Title to real estate previously held by such corporations; confirmed.
13. Similar powers given to quarrying and mineral spring companies.

I. GENERAL PROVISIONS.

Section 1. Companies incorporated under the provisions of this act for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood or metal, or both, unless otherwise provided by this act shall, from the

Iron and steel manufacturing companies — Gen. Laws, §§ 1-5.

date of the letters-patent creating the same, have the powers and be governed, managed and controlled as follows: Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories and such other improvements and erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require.

(1874, April 29; P. L. 73, § 38.)

Powers of foreign corporations. See Foreign Corporations, § 7; see, also, Corporations, §§ 16 et seq.; Act No. 4, at p. 71.

§ 2. They shall not at any one time have more than ten thousand acres of land in this commonwealth, including leased lands, except companies organized to manufacture iron with charcoal, which said companies may hold timber lands not exceeding the quantity that will be required to furnish wood for charcoal for the purposes of said companies, and said lands may be located in not exceeding four contiguous counties.

(1887, May 24; P. L. 188, § 1.)

See Foreign Corporations, § 4. Powers to hold real estate. See Manufacturing Companies, § 7. Same. Id., § 12. Same. See Corporations, § 109; Id., § 2.

§ 3. Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum per annum, and sell, exchange, or otherwise dispose of the same, upon such terms and conditions as they may deem advisable, and such bonds, and the interest therein, may be secured by a mortgage or mortgages upon the corporate franchise, real and leasehold estate: Provided, They shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.

(1874, April 29; P. L. 73, § 38.)

See Corporations, § 65. Obligations to be redeemable in gold or silver. See Corporations, § 110. Counterfeiting bonds. See Crimes, §§ 114, 115.

§ 4. The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year; and it shall also be their duty to make report to the auditor-general, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the commonwealth, and such report shall be verified by the oaths or affirmations of the president and treasurer of such corporation; and any such corporation, which shall neglect or refuse to report to the auditor-general, according to law, shall be liable to a penalty of five hundred dollars for the use of the commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.

(1874, April 29; P. L. 73, § 38.)

See Manufacturing Companies, § 8. Annual report to auditor-general. See Taxation, § 2. Penalty for neglect. Id., § 4.

§ 5. It shall and may be lawful for any corporation, organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, [flowing for the purpose of supplying the same with stream or water owned by such corporation in the vicinity of their works, through or along or rising upon any lands belonging to and power.] upon the said corporation filing in the office of the prothonotary of the said court of common pleas of the county in which such works may be located a draft or drafts showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs, thus appropriated, so as to diminish the usual accustomed and natural flow thereof; Provided, That every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of such stream or streams, spring or springs, have heretofore been accustomed to flow off or along the lands of such corporation.

(1874, April 29; P. L. 73, § 38.)

The clause in brackets should read as follows: "Flowing through or along or rising upon any lands belonging to and owned by such corporations, in the vicinity of their works, for the purpose of supplying the same with steam or water power."

Assessment of damages. See Corporations, § 94; Const., art. XVI, § 8.

Iron and steel manufacturing companies — Gen. Laws, §§ 6-11.

§ 6. The incorporation of any association of persons for the purposes named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchises obtained under the provisions of the same.

(1874, April 29; P. L. 73, § 38.)

§ 7. It shall and may be lawful for any incorporated company of this commonwealth, or elsewhere, to subscribe for and take shares of stock in any company incorporated for the purposes named in said section thirty-eight of the said "Corporation Act of one thousand eight hundred and seventy-four," or to purchase the bonds or stock of such company, or guarantee the payment of said bonds and the interest thereon, or either principal or interest; and it shall and may be lawful for any manufacturing company of this commonwealth, incorporated for the purposes named in said section thirty-eight of the said Corporation Act of one thousand eight hundred and seventy-four, to subscribe for, purchase, hold and dispose of bonds or stock in any incorporated company of this commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: Provided, That this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier.

(1887, June 17; P. L. 411, § 3.)

Not to hold stock in other corporation. See Corporations, § 44.

§ 8. A majority of the stock of any such corporation may be held by persons who are not citizens of this State or of the United States. A majority of its directors may be citizens of another State, or of any foreign country; and it may have an office at any place without the State, at which the by-laws of the corporation may authorize the same meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this State is transacted, and an officer of the company there, upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this commonwealth. Corporations for any of the purposes named in this section, heretofore created by any special or general law of this commonwealth, on accepting the provisions of the Constitution, shall be entitled to all the privi-

leges and powers conferred by this act upon such corporations to be hereafter created. (1874, April 29; P. L. 73, § 38.)

See Escheat, § 47.

§ 9. The stockholders of every company incorporated for the purposes named in this section shall only be individually liable for debts due to the laborers, mechanics, or clerks, for services, and in that case for no period exceeding six months.

(1874, April 29; P. L. 73, § 38.)

See Corporations, § 68 and cross-references.

§ 10. All laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate or to affect any company incorporated under the provisions hereof, or the stockholders of any such company: Provided, This shall not apply to laws imposing taxes upon such corporations.

(1874, April 29; P. L. 73, § 38.)

II. FOREIGN CORPORATIONS.

§ 11. It shall be [and] may be lawful for any company incorporated under the laws of any other State of the United States, for the manufacture of any form of iron, steel, glass, lumber or wood, or for the conversion, dyeing and cleansing of cotton and other fabrics, or for the manufacture of cotton or velvet or other fabrics, or for the manufacture of pyroligneous acids, acetate of lime and charcoal, by the process of destructive distillation, or the preparation of cattle hair for use, or for the manufacture of carbon dioxide and magnesia and the products thereof, and compositions, articles and apparatus from and in connection therewith, or for the manufacture of extracts out of wood, bark, leaves and roots or any other extract for tanning, cleansing, dyeing or other purposes, or for the manufacture or printing of wall paper, lithographs or prints, and mining and manufacture of any clay into brick tile and various other articles and products produced from clay, and from clay and other substances mixed therewith, to erect and maintain buildings for such manufacturing purposes, and for offices and salesrooms, or either, within this commonwealth, and to take, have and hold real estate, not exceeding one hundred acres, necessary and proper for such manufacturing purposes, and for offices, dwellings and salesroom, or either, and to mortgage, bond, lease or convey the same or any part thereof: Provided, That nothing herein contained shall be deemed to prevent or relieve any real estate taken and held by any such foreign corporation under the provisions of this statute from being taxed in like manner with other real estate within this common-

Manufacturing companies — Gen. Laws, § 1.

wealth: And provided further, That no such foreign corporation shall be entitled to employ any greater amount of capital in such business in this State than the same kind of corporations organized under the laws of this State are entitled to employ. And provided further, That every such foreign corporation doing business as aforesaid in this commonwealth shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this State, and every such foreign corporation taking the benefit of this act shall make the same returns to the auditor-general that are required by law to be made by corporations of this State under similar circumstances. (1893, June 8; P. L. 389, § 1.)

See Corporations, § 2; Foreign Corporations, § 4.

§ 12. The title to any real estate in this commonwealth now held by, or in trust for, any such foreign corporations for the purpose aforesaid, is hereby confirmed, to the same effect as if the said real estate has been purchased, held or owned under the provisions of this act.

(1893, June 8; P. L. 389, § 2.)

See Foreign Corporations, § 4.

§ 13. It shall and may be lawful for any company incorporated under the laws of any other State for the manufacture of any form of iron, steel or glass, or for the quarrying of slate, granite, stone or rocks of any kind, or for dressing, polishing or manufacturing the same, or any of them, or for any mineral springs company incorporated for the purpose of bottling and selling natural mineral spring water, to erect and maintain buildings and manufacturing establishments within this commonwealth, and to take, have and hold real estate, not exceeding one hundred acres, necessary and proper for corporate purposes: Provided, That nothing herein contained shall be deemed to prevent or relieve real estate taken and held by any such company under the provisions of this statute from being taxed in like manner with other real estate within this commonwealth: And provided further, That no foreign corporation shall be entitled to employ any greater amount of capital in any such business in this State than the same kind of corporations organized under the laws of this State are entitled to employ: And provided further, That every such foreign corporation, doing business as aforesaid in this commonwealth, shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this State, and every such foreign corporation, taking the

benefit of this act, shall make the same returns to the auditor-general that are now required by law of the corporation[s] of this State.

(1893, June 16; P. L. 466, § 1.)

See Corporations, § 2; Foreign Corporations, § 4.

Manufacturing Companies.

- Sec. 1. Capital stock.
 2. Payment of assessments.
 3. Capital paid in to be sworn to and recorded.
 4. Stockholders liable for debts, on withdrawal of capital.
 5. Directors liable for declaring dividends of insolvent companies.
 6. Limitation of liabilities; directors liable for excess.
 7. Power to take, hold and convey real and personal estate.
 8. Assets and liabilities to be sworn to and recorded annually.
 9. Liability of officer to cease upon making certificate.
 10. Service of process; dissolution.
 11. Stockholders liable for wages of employees.
 12. Power to sell or release real estate must be given expressly by stockholders.
 13. Business specified by charter only to be conducted.
 14. Winding up companies whose charters have expired.
 15. Treasurer to keep separate bank account.
 16. Open list of stockholders to be kept.
 17. Company or general supply stores prohibited.
 18. Leasing or selling right to maintain such stores prohibited.
 19. Violation to forfeit charter; proceedings.
 20. Tank to be prepared for reception of coal, dirt, etc.

Section 1. Companies incorporated under the provisions of this act, for the carrying on of any mechanical, mining, quarrying, manufacturing or other business, as provided in clause eighteen of the second class, in section two hereof, when not otherwise provided in this act, shall, from the date of the letters-patent creating the same, have the powers, and be governed, managed and controlled as follows:

Clause 1. That every such corporation may have a capital stock not exceeding five million dollars, and may, by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely: General stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half yearly sum or dividend to be expressed in the certificates, not exceeding four per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 38, and cross-references; Act No. 4, at p. 71.

§ 2. If the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon. The treasurer shall give notice of the time and place appointed for such sale, and of the sum on each share, by advertising the same three weeks successively before the sale in some newspaper published in said county; and a deed of the share so sold, made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, who shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 38, and cross-references.

§ 3. The president and directors, with the treasurer and clerk of such companies, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer, clerk and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 38, and cross-references.

§ 4. If any part of the capital stock of a company is withdrawn and refunded to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 68.

§ 5. If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: Provided, That the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend, or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.

(1874, April 29; P. L. 73, § 39.)

See Corporations, §§ 17, 68.

[The exchange of stock held in trust for a corporation for the stock of another corporation, issued directly to the stockholders of the first, constitutes the payment of a dividend. *City of Allegheny v. Pittsburg, etc., Co.*, 36 Atl. Rep. 161.]

The leasing by a street railroad company of its road to another corporation at a nominal rental, and the exchange of its stock by the stockholders for stock in the new company, do not constitute a payment of a dividend to the stockholders. *Id.* A dividend of a mutual fire insurance company held valid. *McKean v. Biddle*, 37 Atl. Rep. 528.]

§ 6. The whole amount of the debts which any such company at any time owes shall not exceed the amount of its capital stock actually paid in, unless such debt be for unpaid purchase money for lands bought, which debt shall only be a lien upon and collectible from said land; and in case of any excess, the directors, under whose administration it occurs, shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: Provided, That any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose. If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 72.

§ 7 Such corporation may, in its corporate name, take, hold and convey such real and personal estate as is necessary for the purpose of its organization, may carry on its business, or so much thereof as is convenient, beyond the limits of the commonwealth, and may there hold any real or personal estate necessary for conducting the same.

(1874, April 29; P. L. 73, § 39.)

See Iron and Steel Manufacturing Companies, § 2, and cross-references.

§ 8. Every such corporation shall, annually, in September, make, and the president, treasurer and a majority of the directors shall sign, swear to and deposit with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due

Manufacturing companies — Gen. Laws, §§ 9-14.

to the corporation, on the first day of August next preceding the date of such certificates, and the amount, as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.

(1874, April 29; P. L. 73, § 39.)

See Iron and Steel Manufacturing Companies, § 4, and cross-references.

§ 9. When the officers of such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.

(1874, April 29; P. L. 73, § 39.)

See § 5, ante.

§ 10. Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations. The court of common pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations. When special stock is created by any corporation, under this act, the general stockholders shall be liable for all debts and contracts, until the special stock is fully redeemed.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 81, and cross-references.

§ 11. The stockholders of any and all corporations, under this act, shall be personally liable for all sums of money due to laborers, clerks and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment; and when judgment is obtained against any corporation for wages or labor due, to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 68, and cross-references. Payment of wages. See Wages, §§ 21 et seq.

§ 12. Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained

at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders.

(1874, April 29; P. L. 73, § 39.)

See Corporations, § 59. Amount of land to be held. See Iron and Steel Manufacturing Companies, § 2.

§ 13. Every manufacturing, mining or quarrying company, incorporated under the provisions of this act, shall be confined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or articles of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employees or officials to engage in the buying or selling upon the lands possessed by it of any wares, goods or commodities or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No such company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employees, by reason of the sale or furnishing of goods, wares or merchandise by any person to such operatives or employees, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company from supplying to its employees oil, powder and other articles and implements necessary for or used in mining.

(1874, April 29; P. L. 73, § 43.)

See Const., art. XVI, § 6. Secretary of internal affairs to exercise a supervision. See Secretary of Internal Affairs, § 4.

§ 14. All corporations for mining, manufacturing or trading purposes, whether created by general or special acts of assembly, whose charters may have expired, or may hereafter expire, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to or by them, and sell, convey and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and if no officers survive, the stockholders may elect officers under their by-laws: Provided, That this act shall be construed only so as to enable said corporations to realize and divide their assets, and wind up their affairs, and not to transact new business.

(1881, May 21; P. L. 30, § 1.)

See Corporations, § 6. Voluntary dissolution. See Corporations, §§ 95 et seq.

§ 15. The treasurer of every manufacturing or mining company now incorporated or hereafter incorporated under any special or general law of this commonwealth, shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, under the penalty of fifty dollars for every day he shall fail to comply with said duty, to be recovered at the suit of any informer, in an action of debt; and every director of any such corporation who shall consent to such breach of duty, or, having knowledge thereof, shall not enter his protest on the minutes of the company, shall be liable to the same penalty, to be recovered in like manner.

(1869, April 17; P. L. 71, § 2.)

Officers, their duties. See Corporations, § 17.

§ 16. It shall be the duty of the directors of every such company, to cause a book to be kept by the treasurer or secretary thereof, at the office or principal place of business of the company, which shall contain the names of all persons, alphabetically arranged, who are or who shall within one year, have been stockholders of such company, showing their places of residence, the number of shares of the stock, the owners thereof, and the amount paid on such shares, and the total amount of the capital stock paid in; which book shall, at the end of the year, be carefully preserved in the office of the company for future reference, and shall, during the usual business hours of the day, on every business day, be open for the inspection of all persons who may desire to inspect the same, and any and every person shall have the right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it is transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing by and to whom the same has been transferred; such book shall be prima facie evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against such company, or against any one or more stockholders; and if any such company shall neglect or refuse to keep such book, or to make or cause to be made any proper entry therein, or shall, on application made to any director or officer thereof, neglect or refuse to exhibit the same, or to allow extracts to be taken therefrom, as hereinbefore required, such company shall forfeit and pay to the party aggrieved, fifty dollars for each and every day it shall so neglect or refuse as aforesaid, recoverable by said party as in other cases of claims against such company.

(1849, April 7; P. L. 563, § 24.)

See Corporations, § 17.

§ 17. On and after the passage of this act, it shall not be lawful for any mining or manufacturing corporation of this commonwealth, or the officers or stockholders of any such corporation, acting in behalf or in the interest of any such corporation, to engage in or carry on, by direct or indirect means, any store known as a company store, general supply store or store where goods and merchandise other than such as have been mined or manufactured by the mining or manufacturing corporation of which said officers or stockholders are members, are kept or offered for sale.

(1891, June 9; P. L. 256, § 1.)

§ 18. No mining or manufacturing corporation engaged in business under the laws of this commonwealth, shall lease, grant, bargain or sell to any officer or stockholder of any such corporation, nor to any other person or persons whatsoever, the right to keep or maintain upon the property of any such corporation, any company, general supply or other store in which goods other than those mined or manufactured by the corporation granting such right, shall be kept or exposed for sale, whenever such lease, grant, bargain or sale as aforesaid, is intended to defeat the provisions of the first section of this act. Nor shall any such mining or manufacturing corporation, through its officers, stockholders, or by any rule or regulation of its business, make any contract with the keepers or owners of any store, whereby the employees of such corporation shall be obliged to trade with such keeper or owner, and that any such contract made in violation of this act, shall be prima facie evidence of the fact that such store is under the control of such mining or manufacturing corporation, and in violation of this act.

(1891, June 9; P. L. 256, § 2.)

§ 19. For any violation of any of the provisions of this act by any mining or manufacturing corporation aforesaid, such mining or manufacturing corporation so offending shall forfeit all charter rights granted to it under the laws of this commonwealth, and it is hereby declared and made the duty of the attorney-general of this commonwealth, upon complaint of such violation of any of the provisions of this act, by a petition signed and sworn to by two or more citizens, residents of the county where the offense is sworn to have been committed, to immediately commence proceedings against the corporation or corporations complained against, by a writ of quo warranto.

(1891, June 9; P. L. 256, § 3.)

See Quo Warranto, §§ 1 et seq.

§ 20. All persons engaged in any of the manufacturing interests of this State, accustomed to the washing of iron and other ores, and of coal preparatory to its use for coking, or in the tanning of hides by a process in which vitriol is used, shall prepare

Quo warranto — Gen. Laws, §§ 1, 2.

a tank or other suitable receptacle into which the culm or coal dirt, the offal, refuse and the tan bark and the liquor, or the water therefrom, may be collected, so that the sediment therefrom, so far as is practicable, may be thereby prevented from passing into or upon any of the rivers, lakes, ponds or streams of this commonwealth, under a penalty of fifty dollars for each offense, in addition to liability for all damages he or they may have done to any individual owners or lessees on such waters.
(1876, May 8; P. L. 146, § 1.)

Quo Warranto.

- Sec. 1. Issuing of writ by supreme court.
2. When common pleas may issue writ concurrently with supreme court.
3. Attorney-general authorized to proceed in certain cases.
11. Proceedings against corporations to be had in supreme court.
12. Form of judgment against defendant; allowance of costs.
13. If judgment favorable to defendant, costs to be given him.
14. Execution against defendant to be by injunction.
15. Proceedings to remove injunction.
16. Writ of error; execution may be awarded notwithstanding.
17. Return and hearing of writ of error.
18. Act not to bar prosecution for breach of other acts.
21. Trustees may be appointed, in case of ouster.
22. Officers to hold in trust, after judgment of ouster.
23. Appointment of receiver.
24. Act to apply to prior cases of ouster.

Section 1. Writs of quo warranto may be issued by the supreme court, in the form and manner hereinafter provided, in all cases in which the writ of quo warranto, at common law, may have been issued, and in which the said court has heretofore possessed the power of granting information, in nature of such writ.

(1836, June 14; P. L. 621, § 1.)

See Corporations, § 80. Voluntary dissolution.
See Corporations, §§ 95-99.

[This statute is remedial, and is to be construed to advance the remedy. *Commonwealth v. Cluley*, 56 Penn. St. 270. The unwieldiness of the old remedy gave place and practice to the more simple prosecution by information in the nature of quo warranto, filed by the attorney-general in the king's bench. Under the Pennsylvania statutes, the remedy here stands very much as in England at the present time. *Commonwealth v. Burrell*, 7 Penn. St. 34.

At common law writ of quo warranto lay for the usurpation of a franchise in violation of the right of the king, and was in the nature of a writ of right from the king; consequently none but the officer of a king could sue it out. *Blackstone*, Book 3, p. 261; see 2 *Stra. Rep.* 1196.

The remedy by information is not a criminal proceeding, but a civil proceeding to try a right, and consequently not within the constitutional prohibition which declares that no person shall for any indictable offense be proceeded against criminally by information. *Commonwealth v. Browne*, 1 S. & R. 382; *Commonwealth v. Burrell*, 7 Penn. St. 34.

The writ under this act is not more a matter of right than is the quo warranto information under the statute of Anne; it rests in the sound discretion of the court. *Commonwealth v. Jones*, 12 Penn. St. 365; *Commonwealth v. McCarter*, 98 id. 607; *Murphy v. Bank*, 20 id. 415; *Commonwealth v. Cluley*, 56 id. 270; *Commonwealth v. Reigart*, 14 S. & R. 216; *Commonwealth v. R. R. Co.*, 20 Penn. St. 518; *Commonwealth v. Davis*, 109 id. 128.

Formerly the practice was not to issue the writ without a previous rule to show cause, except when either the attorney-general or the district attorney were the relators; when the writ was granted without such rule, a motion to quash might be entertained. *Commonwealth v. Bank*, 10 Phila. 156; *Commonwealth v. Jones*, 12 Penn. St. 365; *Commonwealth v. Walter*, 83 id. 105; s. c., 3 W. N. C. 376; *Commonwealth v. Daly*, id. 133; *Gilroy's App.*, 100 Penn. St. 5; s. c., 41 Leg. Int. 320; *Commonwealth v. Cluley*, 56 Penn. St. 270.

The object of the law is to allow the respondent the opportunity of a hearing before being put to an answer; if the advantage of the preliminary hearing is secured to him, it is immaterial whether it is accomplished by a rule to show cause, or the less cumbersome motion to quash. *Murphy v. Bank*, 20 Penn. St. 415. Present practice seems to be that while a previous rule is not indispensable, it is usual. When such rule is not obtained, motion to quash always entertained at the instance of the respondent, is considered equivalent to rule to show cause, and less cumbersome. *Commonwealth v. Bank*, 10 Phila. 156; *Murphy v. Bank*, 20 Penn. St. 415; *Commonwealth v. Walter*, 83 id. 105; s. c., 3 W. N. C. 376; *Commonwealth v. Cluley*, 56 Penn. St. 270; *Gilroy v. Commonwealth*, 105 id. 484; s. c., 14 W. N. C. 428.

Quo warranto lies to forfeit the exclusiveness of a franchise, as well as to forfeit an entire franchise. *Commonwealth v. Sturtevant*, 37 Atl. Rep. 916.

An information held sufficiently specific in alleging the facts requiring a forfeiture as against an objection first raised by motion in arrest. *Id.*

Nor would such motion be sustained because the information did not allege that such acts were "wilful." *Id.*]

§ 2. Writs of quo warranto, in the form and manner hereinafter provided, may also be issued by the several courts of common pleas, concurrently with the supreme court, in the following cases, to-wit:

III. In case any question shall arise concerning the exercise of any office, in any corporation, created by authority of law, and having the chief place of business within the respective county. And in any such case, the writ aforesaid may be issued, upon the suggestion of the attorney-general, or his deputy, in the respective county, or of any person or persons desiring to prosecute the same.

IV. In case any association, or number of persons, shall act as a corporation, or shall exercise any of the franchises or privileges of a corporation, within the respective county, without lawful authority.

V. In case any corporation as aforesaid, shall forfeit by misuser, or non-user, its corporate rights, privileges or franchises, or shall do, suffer or omit to do, any act, matter or thing, whereby a forfeiture thereof shall by law be created, or shall exercise any power, privilege or franchise not granted or appertaining to such corporation. And in any such case, the writ aforesaid may be

Quo warranto — Gen. Laws, §§ 3, 11-13.

issued upon the suggestion of the attorney-general, or his deputy, in the respective county, or of any person or persons desiring to prosecute the same.

(1836, June 14; P. L. 621, § 2.)

Unused charters void. Const., art. XVI, § 1. Corporation to be proceeded against. See Corporations, § 107. Corporation to forfeit charter, when. *Id.*, § 126. Same. See Manufacturing Companies, § 19.

[Commonwealth has power to try whether or not a contract entered into between two corporations is in excess of legitimate power of either. *Commonwealth v. Canal Co.*, 43 Penn. St. 295; *Commonwealth v. Wisler*, 11 W. N. C. 513; *Commonwealth v. R. R. Co.*, 10 id. 400; *Clark v. Commonwealth*, 29 Penn. St. 129.

Remedy for contesting validity of an election of directors is by a proceeding in quo warranto. *Updegraff v. Crans*, 47 Penn. St. 103; *Jenkins v. Baxter*, 160 id. 199.

Commonwealth does not interfere for asserting the rights of either party as against the other, except by trial of a suit of one against the other; it simply asserts a usurpation of franchises or functions not granted by the State. *Commonwealth v. Canal Co.*, 43 Penn. St. 295.

This section was passed, to give a more speedy remedy by writ, not only in those cases recognized by the common law, but also in cases identical with or similar to those provided for by that statute. *Commonwealth v. Burrell*, 7 Penn. St. 34.

The writ cannot issue at the instance of a private individual, when the question involved the existence of the corporation; in questions involving administration of corporate functions or duties, which touch only individual rights, such as the election of officers, admission of a corporate officer or member and the like, the writ may issue at the suit of the attorney-general or of any person or persons desiring to prosecute the same. *Murphy v. Bank*, 20 Penn. St. 415; *Commonwealth v. R. R. Co.*, id. 518; *Commonwealth v. Bridge Co.*, id. 185; see *Commonwealth v. Order*, 166 id. 33; s. c., 30 Atl. Rep. 930.]

§ 3. Whenever the attorney-general shall have reason to believe that any association as aforesaid ha[s] acted as a corporation, or exercised any of the franchises or privileges thereof, without lawful authority, or that any corporation has forfeited its corporate rights, privileges or franchises, as aforesaid, or exercised any power, privilege or franchise, not granted or appertaining to such corporation, it shall be his duty to file, or cause to be filed, a suggestion as aforesaid, and to proceed thereon for the determination of the matter.

(1836, June 14; P. L. 621, § 3.)

See Corporations, § 93.

[The Act of 1850, May 3; P. L. 654, § 1; District Attorney, 10; does not take away the authority of the attorney-general to institute proceedings agreeably to this section. *Commonwealth v. Bank*, 28 Penn. St. 391.

No charter of the corporation for public purposes can be forfeited except by the commonwealth in a direct proceeding for that purpose. *Hinchman v. Turnpike*, 160 Penn. St. 150; see 5 Del. Co. R. 414.]

§ 11. In all proceedings by quo warranto, whether at the suggestion of the attorney-general or any person or persons desiring to

prosecute the same, against any association or any number of persons who shall act as a corporation, or shall exercise any of the franchises or privileges of a corporation without lawful authority, or against any corporation which shall forfeit by mis-user or non-user its corporate rights, privileges or franchises, or shall do, suffer, or omit to do any act, matter or thing, whereby a forfeiture thereof shall by law be created, whether the said forfeiture may be declared by the legislature or otherwise, or shall exercise any power, privilege or franchise not granted or appertaining to such corporation, the suggestion may be filed and all proceedings had in the supreme court, wherever the same may be sitting, and any questions of fact on which an issue may be ordered shall be tried before a judge of the supreme court, and by a jury summoned from any county in which the supreme court shall be sitting at the time of such trial, and proceedings commenced or prosecuted in any district shall be certified to any other district, as may be requisite for the speedy determination thereof.

(1853, March 17; P. L. 685, § 2.)

See § 1, ante, and cross-references.

[A relator, having no interest except that which is common to every citizen, is not entitled by this act to sue out a writ of quo warranto. *Commonwealth v. Bank*, 2 G. R. 392; *Commonwealth v. Horne*, 10 Phila. 164; *Commonwealth v. Bumm*, id. 162.]

§ 12. If the defendant in any quo warranto as aforesaid, whether a natural person or persons, or a corporation, be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising the office, franchise, privilege or power mentioned in such writ, the court shall give judgment that such defendant be ousted, and altogether excluded from such office, franchise, privilege or power, and that the commonwealth or party suing the writ, as the case may be, recover costs from the defendant.

(1836, June 14; P. L. 621, § 11.)

See §§ 13, 14, post.

§ 13. If judgment be given for the defendant in any such writ, and the proceedings have been instituted on the relation of any private prosecutor, the court shall also give judgment, that the defendant recover his costs of such relator, to be levied by execution as in cases of debt. If the proceedings have been instituted by the attorney-general, at his own instance, it shall be lawful for the court, in their discretion, on giving judgment for the defendant, to order that the costs be paid by the county in which the matters complained of were alleged to have taken place.

(1836, June 14; P. L. 621, § 12.)

§ 14. If judgment of ouster and exclusion, as aforesaid, be given against any defendant, execution thereof shall be had by a writ of injunction, which shall be awarded by the court against such defendant, whether a natural person or persons, or a corporation; such injunction shall recite the judgment of the court, and shall enjoin the defendant, or defendants, from exercising the office, franchise, privilege or power mentioned therein, and obedience thereto may be compelled by attachment and sequestration, in like manner as in other cases of injunction.

(1836, June 14; P. L. 621, § 13.)

See §§ 15, 16, post.

[See *Commonwealth v. Small*, 26 Penn. St. 31.]

§ 15. If such injunction shall have been issued upon a judgment rendered by default, as aforesaid, the defendant therein may, nevertheless, upon the payment of costs, and reasonable notice to the adverse party, and such other terms as the court shall deem equitable, plead to the suggestion as aforesaid, and thereupon the parties shall proceed to issue and trial, in like manner as if the defendant had appeared at the return of the writ, and had pleaded in due course; and if judgment shall be rendered in favor of such defendant, the judgment by default shall be taken off, and the injunction aforesaid shall thenceforth be dissolved.

(1836, June 14; P. L. 621, § 14.)

See §§ 16, 17, post.

§ 16. It shall be lawful for any person aggrieved by the judgment of any court of common pleas, upon any writ of quo warranto as aforesaid, to remove the same, by writ of error, into the supreme court for the proper district, but it shall be lawful for the court to which such writ of error shall be directed to award execution as aforesaid, notwithstanding such writ of error, if, in the discretion of the court, the case shall appear to require it.

(1836, June 14; P. L. 621, § 15.)

§ 17. Every such writ of error may be made returnable forthwith, if the supreme court shall be in session in the proper district, and shall be heard and decided by the judge thereof, at the term to which it is returnable.

(1836, June 14; P. L. 621, § 16.)

§ 18. Nothing herein contained shall debar any prosecution for breach of any act of assembly in relation to corporations, corporate or other officers, or persons acting as corporations without lawful authority.

(1836, June 14; P. L. 621, § 17.)

§ 21. When the persons claiming to be officers of any corporation shall be ousted by the judgment of any court, on a writ of quo warranto, it shall be lawful for said

court to appoint not less than three nor more than nine trustees to take charge of said corporation, who shall be selected and chosen by the said court, out of such persons as are, by the charter of said corporation, competent to be elected officers thereof; and said trustees so appointed shall exercise and perform all the duties of officers of the said corporation, until others shall be elected in their stead, pursuant to the law regulating said corporation, or the order of court, where there is no sufficient law providing for the same.

(1840, April 13; P. L. 319, § 14.)

See § 22, post.

§ 22. Whenever any corporation, incorporated under the laws of this commonwealth, shall have been dissolved by judgment of ouster, upon proceedings of quo warranto, in any court of competent jurisdiction, all the estate, both real and personal, of which such corporation are in any way seized or possessed, shall pass to and vest in the person[s] who at the time of such dissolution are the officers of such corporation, in trust to hold the same for the benefit of the stockholders and creditors of the corporation.

(1872, April 4; P. L. 46, § 1.)

See Corporations, § 97.

§ 23. The supreme court, [or any judge thereof sitting at nisi prius,] shall, upon the petition of any stockholder or creditor of such corporation, appoint a receiver, who shall have all the powers of a receiver appointed by a court of chancery, to take possession of all the estate, both real and personal, thereof, and make distribution of the assets among the persons entitled to receive the same according to law: Provided, That written notice, as may be directed by the court, shall be given to the persons, or a majority of them, who were at the time of the dissolution officers of the corporation, of the intention, time and place of presenting such petition: And provided further, That it shall be the duty of such receiver to give notice of his appointment, [and] time and place of meeting, to all the stockholders of such corporation, and to advertise the same as the court may direct.

(1872, April 4; P. L. 46, § 2.)

See Corporations, § 98; Escheat, § 43.

[The supreme court alone has jurisdiction on judgment of ouster against a corporation to appoint a receiver, under this act. *Commonwealth v. Order*, 156 Penn. St. 531; s. c., 33 W. N. C. 1; s. c., 27 Atl. Rep. 14; *In re Estate*, 159 Penn. St. 603; s. c., 34 W. N. C. 218; s. c., 28 Atl. Rep. 479.]

§ 24. The provisions of this act shall also apply to any corporation that has been heretofore dissolved by judgment of ouster

upon proceedings of quo warranto, in any court of competent jurisdiction, the affairs of which have not been settled and adjusted. (1872, April 4; P. L. 46, § 3.)

Note.— This section is practically obsolete.

Secretary of Internal Affairs.

Sec. 4. Powers and duties of secretary.

§ 4. * * * The secretary of internal affairs shall discharge such duties relating to corporations, to charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or business interests of the State as may be prescribed by law. It shall be his especial duty to exercise a watchful supervision over the railroad, banking, mining, manufacturing and other business corporations of the State, and to see that they confine themselves strictly within their corporate limits; and in case any citizen or citizens shall charge, under oath, any corporation with transcending its corporate functions or infringing upon the rights of individual citizens, said secretary shall carefully investigate such charges, and may require from said corporation a special report, as enjoined in the Constitution of the State; and in case he believes the charges are just, and the matter complained of is beyond the ordinary province of individual redress, he shall certify his opinion to the attorney-general of the State, whose duty it shall be, by an appropriate legal remedy, to redress the same by a proceeding in the courts, at the expense of the State: * * *

See Manufacturing Companies, § 13; Const., art. XVI, § 6, and cross-references.

Taxation.

I. State Taxation.

- Sec. 1. Corporations, etc., to be registered.
 2. Annual reports to auditor-general.
 3. Tax on capital stock.
 4. Penalty for neglect to make report.
 9. Treasurers of corporations to assess tax.
 10. Tax on gross receipts of certain companies.
 25. Enrollment tax on private acts.
 28. Taxation of personal property for State purposes.
 113. No corporations to be dissolved, or judicial sale valid until taxes are paid.
 114. Settlement with insolvent corporations.

III. Exemption from Taxation.

Sec. 520. Manufacturing companies to be exempt from taxation.

I. STATE TAXATION.

Section 1. No limited partnership, bank, joint-stock association, association, corpora-

tion or company whatsoever, formed, erected, incorporated or organized, by or under any law of this commonwealth, general or special, or formed, erected, incorporated or organized under the laws of any other State, and doing business in this commonwealth, shall go into operation, without first having the name of the institution or company, the date of incorporation or organization, the act of assembly or authority under which formed, incorporated or organized, the place of business, the post-office address, the names of the president, chairman, secretary and treasurer or cashier, and the amount of capital authorized by its charter, and the amount of capital paid into the treasury, registered in the office of the auditor general; and every limited partnership, bank, association, joint-stock association, company or corporation whatsoever, now engaged in business in this commonwealth, shall within ninety days after the passage of this act, register as herein required in the office of the auditor-general; all the corporations, companies, associations and limited partnerships aforesaid, shall annually hereafter notify the auditor-general of any change in their officers; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor general and State treasurer in the same manner as taxes on capital stock are settled and collected.

(1889, June 1; P. L. 420, § 19.)

Taxes to be uniform. Const., art. IX, § 1. All corporations to be registered. See Corporations, § 11.

§ 2. Hereafter, except in the case of banks, savings institutions and foreign insurance companies, it shall be the duty of the president, chairman or treasurer of every corporation, having capital stock, every joint-stock association and limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this commonwealth, and of every corporation, joint-stock association and limited partnership whatsoever, now or hereafter incorporated or organized by or under the laws of any other State or territory of the United States, or by the United States or by any foreign government, and doing business in and liable to taxation within this commonwealth, or having capital or property employed or used in this commonwealth by or in the name of any limited partnership, joint-stock association, company or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner, to make a report in writing to the auditor-

general, in the month of November, 1892, and annually thereafter, stating specifically:

- I. Total authorized capital stock.
- II. Total authorized number of shares.
- III. Number of shares of stock issued.
- IV. Par value of each share.
- V. Amount paid into the treasury on each share.
- VI. Amount of capital paid in.
- VII. Amount of capital on which dividend was declared.
- VIII. Date of each dividend declared during said year ended with the first Monday of November.
- IX. Rate per centum of each dividend declared.
- X. Amount of each dividend during the year ended with the first Monday in said month.
- XI. Gross earnings during the year.
- XII. Net earnings during said year.
- XIII. Amount of surplus.
- XIV. Amount of profit added to sinking fund during said year.
- XV. Highest price of sales of stock between the first and fifteenth days of November aforesaid.
- XVI. Highest price of sales of stock during the year aforesaid.
- XVII. Average price of sales of stock during the year; and in every case any two of the following-named officers of such corporation, limited partnership or joint-stock association, namely: The president, chairman, secretary and treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of their knowledge and belief, shall, between the first and fifteenth days of November of each year, estimate and appraise the capital stock of the said company at its actual value in cash, not less however than the average price which said stock sold for during said year, and not less than the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends or carried into surplus or sinking fund, and when the same shall have been so truly estimated and appraised they shall forthwith forward to the auditor-general a certificate thereof, accompanied with a copy of their said oath or affirmation, signed by them and attested by a magistrate or other person duly qualified to administer the same: Provided, That if the auditor-general and State treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, based upon the facts contained in the report herein required, or upon any information within their possession or that shall come into their possession, and to settle an account on the valuation so made by them for the taxes, penalties and interest

due the commonwealth thereon, with right to the company dissatisfied with any settlement so made against it to appeal therefrom in the manner now provided by law; and in the event of the neglect or refusal of the officers of any corporation, company, joint-stock association or limited partnership, for a period of sixty days, to make the report and appraisement to the auditor-general as herein provided, it shall be the duty of the auditor-general and State treasurer to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association or limited partnership, and settle an account for taxes, penalty and interest thereon, from which settlement there shall be no right of appeal. (1891, June 8; P. L. 229, § 4.)

Report on increase of capital stock. See Corporations, § 50; Crimes, § 608; Iron and Steel Manufacturing Companies, § 4. Penalty for neglect to report. § 4, post.

§ 3. Every corporation, joint-stock association, limited partnership and company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to and pay into the treasury of the commonwealth, annually, a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock, of all kinds, including common, special and preferred, as ascertained in the manner prescribed in said twentieth section, and it shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association or limited partnership, upon which a tax is imposed by this section, to transmit the amount of said tax to the treasury of the commonwealth within thirty days from the date of settlement of the account by the auditor-general and State treasurer: Provided, That for the purposes of this act, interests in limited partnerships or joint-stock associations shall be deemed to be capital stock and taxable accordingly: Provided also, That corporations, limited partnerships and joint-stock associations, liable to tax on capital stock under this section, shall not be required to make any report or pay any further tax on the mortgages, bonds and other securities owned by them in their own right; but corporations, limited partnerships and joint-stock associations, holding such securities as trustees, executors, administrators, guardians, or in any other manner, shall return and pay the tax imposed by this act upon all securities so held by them as in the case of individuals: And provided further, That the provisions of the section shall not apply to the taxation of so much of the capital stock of corporations, limited partnerships or joint-stock associations, organized for manufacturing purposes, which is invested in and actually and exclusively employed in carrying on manufacturing within the State, except

companies engaged in the brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right of eminent domain; but every manufacturing corporation, limited partnership or joint-stock association shall pay the State tax of five mills herein provided, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to its manufacturing business, in addition to the local taxes assessed upon its property in the districts where located, it being the object of this proviso to relieve from State taxation only so much of the capital stock as is invested purely in the manufacturing plant and business: Provided further, In case of fire or marine insurance companies the tax imposed by this section shall be at the rate of three mills on each dollar of the actual value of the whole capital stock.

(1893, June 8; P. L. 353, § 1.)

Capital stock. See Corporations, § 38.

§ 4. If the said officers of any such limited partnership, joint-stock association or corporation, shall neglect or refuse to furnish the auditor-general, on or before the thirty-first day of December in each and every year, with the report and appraisement as aforesaid, as required by the twentieth section of this act, it shall be the duty of the accounting officers of the commonwealth to add ten per centum to the tax of said limited partnership, joint-stock association or corporation, for each and every year for which such report and appraisement were not so furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling accounts and collecting such taxes; if the officers of any such limited partnership, association, joint-stock association or corporation, or any of them, shall intentionally fail to comply with the requirements of the twentieth section of this act for three successive years, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars and undergo an imprisonment not exceeding one year, or both or either, at the discretion of the court.

(1889, June 1; P. L. 420, § 22.)

See Iron and Steel Manufacturing Companies, § 4.

§ 9. Hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this commonwealth, or the laws of any other State, or of the United States, and doing business in this commonwealth, upon the payment of any interest on any scrip, bond, or certificate of indebtedness, issued by said corporation to residents of this common-

wealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt, and to report on oath, annually on the first Monday of November, to the auditor-general the amount of indebtedness of the corporation owned by residents of this commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct [three] mills on every dollar of the interest paid as aforesaid and return the same into the State treasury within fifteen days after the thirty-first day of December in each year; and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax and make a report as aforesaid, the auditor-general shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation the bonds, certificates or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same.

(1885, June 30; P. L. 193, § 4.)

§ 10. Every railroad company, pipe line company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, street passenger railway company, and every other company, joint-stock association or limited partnership, now or hereafter incorporated or organized by or under any law of this commonwealth, or now or hereafter organized or incorporated by any other State or by the United States or any foreign government, and doing business in this commonwealth, and owning, operating or leasing to or from another corporation, company, association, joint-stock association or limited partnership, any railroad, pipe line, slack water navigation, street passenger railway, canal or other device for the transportation of freight or passengers or oil and every telephone or telegraph company incorporated under the laws of this or any other State or of the United States and doing business in this commonwealth, and every express company, incorporated or unincorporated, doing business in this commonwealth, and every firm, copartnership or joint-stock company or association doing express business in this commonwealth, and every electric light company, and every palace car and sleeping car company, incorporated or unincorporated, doing business in this commonwealth, shall pay to the State treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation, company or association, limited partnership, firm or copartnership, received from passengers and freight traffic transported wholly within this State, and from telegraph, telephone or express business done wholly within this State, or from business of electric light companies, and from the transportation of oil done wholly within the

State; the said tax shall be paid semi-annually upon the last days of January and July in each year; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, firm, copartnership, limited partnership, joint-stock association or corporation, to transmit to the auditor-general a statement, under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, joint-stock associations or limited partnerships derived from all sources, and of gross receipts from business done wholly within the State, during the preceding six months ending on the first days of January and July in each year; and if any such company, firm, copartnership, joint-stock association, association or limited partnership or corporation, shall neglect or refuse for a period of thirty days after such tax becomes due, to make said returns or to pay the same, the amount thereof with an addition of ten per centum thereto, shall be collected for the use of the commonwealth as other taxes are recoverable by law; Provided, That in any case where the works of one corporation, company, joint-stock association or limited partnership are leased to and operated by another corporation, company, or association or limited partnership, the taxes imposed by this section shall be apportioned between the said corporations, companies, associations or limited partnerships in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the commonwealth shall first look to the corporation, company, association or limited partnership operating the works, and upon payment by the said company, corporation, association or limited partnership of a tax upon the receipts as herein provided derived from the operation thereof, the corporation, company, joint-stock association or limited partnership from which the said works are leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works.

(1889, June 1; P. L. 420, § 23.)

Yearly income limited. See Corporations, § 10.

§ 25. No private act of assembly herein-after described and taxed, shall be enrolled in the office of the secretary of the commonwealth, or published or have the force and effect of law, until the party asking or requiring the same shall have paid into the treasury of the commonwealth the following sums, to-wit:

On every act incorporating, or extending or renewing the charter of any bank, with a capital not exceeding two hundred thousand dollars, the sum of two hundred dollars.

With a capital over two hundred thousand dollars, and not exceeding four hundred thousand dollars, four hundred dollars.

With a capital over four hundred thousand dollars, and not exceeding six hundred thousand dollars, the sum of five hundred dollars.

With a capital over six hundred thousand dollars, and not exceeding one million dollars, eight hundred dollars.

With a capital over one million dollars, the sum of one thousand dollars.

On every act chartering, or renewing or extending the charter of any savings institution, bank of deposit or safe deposit company, the sum of one hundred dollars.

On every act incorporating or rechartering any iron, coal, manufacturing, mining, warehousing or oil company, or conferring any of these rights or privileges upon any existing corporation, the sum of two hundred dollars; and in all cases heretofore enumerated, where the chartered privileges are given for a longer period than twenty years, the amounts respectively shall be double the rates above specified.

On every act for the incorporation of any canal, railroad, transportation, telegraph, boom, general express, steam vessel, lumber or exploring company, or for insurance, except mutual insurance companies, the sum of one hundred dollars; and the like sum on every bill conferring any of these powers or privileges on any existing corporation; and in all cases hereinbefore mentioned, where the same act confers the necessary powers or privileges of two or more of said corporations, the same taxes shall be imposed as if such powers or privileges had been conferred by separate enactments; Provided, That authority to construct a railroad not exceeding ten miles in length, when necessary to the enjoyment of other privileges conferred, shall not subject such act to any additional tax.

On every act for the incorporation of any local express, transfer, ferry, improvement, navigation, land or market company, the sum of fifty dollars.

* * * * *

§ 28. From and after the passage of this act, all personal property of the classes hereinafter enumerated, owned, held or possessed by any person, persons, copartnership, or unincorporated association or company, resident, located or liable to taxation within this commonwealth, or by any joint-stock company or association, limited partnership, bank or corporation whatsoever, formed, erected or incorporated by, under or in pursuance of any law of this commonwealth or of the United States, or of any other State or government, and liable to taxation within this commonwealth, whether such personal property be owned, held or possessed by such person or persons, copartnership, unincorporated association, company, joint-stock company or association,

limited partnership, bank or corporation, in his, her, their or its own right, or as active trustee, agent, attorney-in-fact or in any other capacity, for the use, benefit or advantage of any other person, persons, copartnership, unincorporated association, company, joint-stock company, or association, limited partnership, bank or corporation, is hereby made taxable annually for State purposes at the rate of four mills on each dollar of the value thereof, and no failure to assess or return the same shall discharge such owner or holder thereof from liability therefor to the commonwealth, that is to say:

* * * all loans issued by or shares of stock in any bank, corporation, association, company or limited partnership, created or formed under the laws of this commonwealth or of the United States, or of any other State or government, including ear trust securities and loans secured by bonds or any other form of certificate or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof, except shares of stock in any corporation or limited partnership liable to the capital stock tax imposed by the twenty-first section of this act, or relieved from the payment of tax on capital stock by said section: * * * this section shall take effect on the first day of January, 1892.

(1891, June 8; P. L. 229, § 1.)

Stock deemed personal property. See Corporations, § 44.

§ 113. No corporation, company, joint-stock association, association or limited partnership made taxable by this act, shall hereafter be dissolved by the decree of any court of common pleas, nor shall any judicial sale be valid or a distribution of the proceeds thereof be made, until all taxes due the commonwealth have been fully paid into the State treasury, and the certificate of the auditor-general, State treasurer and attorney-general to this effect filed in the proper court, with the proceedings for dissolution or sale.

(1889, June 1; P. L. 420, § 32.)

Dissolution. See Corporations, §§ 95 et seq.

§ 114. It shall be lawful for the State treasurer and auditor-general to settle and adjust with any corporation, whether domestic or foreign, that has heretofore carried on business in this State and which is now indebted to the commonwealth, but has gone into liquidation, become insolvent or ceased to carry on business, and which has no known or available property in this or any other State that may be seized in the execution by process thereof issued out of any of the courts of this or any other

State, may compound or settle any taxes due by the same to this commonwealth on such terms as may be adjudged by said officers to be for the best interests of the commonwealth: Provided, That such extension, composition or settlement shall be approved by the attorney-general.

(1881, June 10; P. L. 114, § 1.)

Dissolution. See Corporations, §§ 95 et seq.

III. EXEMPTION FROM TAXATION.

§ 520. The taxes laid upon manufacturing corporations, by and under the revenue laws of this commonwealth, be and the same are hereby abolished as to such corporations, and the laws, under which such taxes are laid and collected, be and the same are hereby repealed, so far, and so far only, as they apply to and affect manufacturing corporations: Provided, That the provisions of this act shall not apply to corporations engaged in the manufacture of malt, spiritous or vinous liquors, or in the manufacture of gas: Provided, This act shall go into effect immediately, reserving and excepting unto the commonwealth the right to collect any taxes accrued under the laws repealed by this act.

(1885, June 30; P. L. 193, § 20.)

Laws exempting property from taxation prohibited. Const., art. III, § 7. Same. Id., art. IX, § 2.

[Foreign corporation having no factory, office or other place of business in this State, and whose sales are made through agents, is not liable to be assessed with a mercantile tax as a dealer doing business in this State. Commonwealth v. Am. Tobacco Co., 175 Penn. St. 531.]

Wages.

III. Payment of Wages.

- Sec. 21. Payment of certain employes, laborers and wage-workers to be made semi-monthly.
22. Assignment of future wages not valid.
23. Factory inspector, or any citizen, to bring action for violation of act.
24. Interest, on failure to pay wages in cash.

IV. Miscellaneous Provisions.

- Sec. 25. When notice of intention to quit is required, notice of intention to discharge must be given.
26. Suit may be brought for recovery of amount due.
27. Employer may retain part of wages as contributions for charitable purposes.

III. PAYMENT OF WAGES.

§ 21. From and after a period of two months subsequent to the date of the passage of this act, every individual, firm, association or corporation employing wage-workers, skilled or ordinary, laborers engaged at manual or clerical work, in the

business of mining or manufacturing, or any other employes, shall make payment in lawful money of the United States to the said employes, laborers and wage-workers, or to their authorized representatives; the first payment to be made between the first and fifteenth, and the second payment between the fifteenth and thirtieth of each month, the full net amount of wages or earnings due said employes, laborers and wage-workers upon the first and fifteenth instant of each and every month wherein such payments are made. And in case any individual, firm, corporation or association or other employer, shall refuse to make payment when demanded, upon the dates herein set forth, to wage-workers, laborers or other employes employed by or with the authority of such individual, firm, corporation or association or other employer, the said individual, the members of the firm, the directors, officers and superintendents or managers of said corporation and associations, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not to exceed two hundred dollars.

(1891, May 20; P. L. 96, § 1.)

Corporation may pension employes. See Corporations, § 111. Refusal to pay semi-monthly. See Crimes, § 630. Who to bring action for violation of act. § 23, post. Stockholders liable for wages. See Manufacturing Companies, § 11. Suit may be brought for amount due. § 26, post. Contributions for charity may be retained. § 27, post.

§ 22. No assignment of future wages payable semi-monthly, under the provisions of this act, shall be valid, nor shall any agreement be valid that relieves the said firms, individuals, corporations or associations from the obligation to pay semi-monthly, and in the lawful money of the United States.

(1891, May 20; P. L. 96, § 2.)

[An assignment which professes to transfer a debt for wages, not yet earned, against any person who may thereafter employ the assignor, although there be notice of the assignment to the employer, is insufficient without his acceptance. *Jermyn v. Mollitt*, 75 Penn. St. 339.]

An assignment of wages to be earned in the future, executed when the assignor was not in the employment of the party from whom payment of wages is demanded by virtue of the assignment, is void, as against public policy, and will not be enforced by the courts. *Woodring v. R. R. Co.*, 2 Penn. C. C. 465.

An order to collect and appropriate wages to become due from any future employment, may become an irrevocable assignment by an appropriation of the wages to a particular use; but it may be revoked as a power of attorney at any time before execution; as an assignment of wages to be earned in a future employment, it will not be enforced in the courts. *Trumbower v. Ivey*, 2 Penn. C. C. 470.

An employee may waive the right to receive his wages in cash under this act, and may validly consent to receive his pay in store orders. *Hamilton v. Jutte*, 16 Penn. C. C. 193.]

§ 23. It is hereby made the duty of the factory inspector and his deputies to bring actions in the name of the commonwealth against every individual, firm, corporation and association violating the provisions of this law, upon the request of any citizen of this commonwealth. Upon his failure to do so, any citizen of this commonwealth is hereby authorized to do so in the name of the commonwealth.

(1891, May 20; P. L. 96, § 3.)

See Corporations, § 80.

§ 24. If any person, firm, company, corporation or association shall refuse, for the space of twenty days, to settle and pay any of their said employes at the intervals of time as provided in section two of this act, or shall neglect or refuse to redeem any of cash orders herein provided for, within the time specified, if presented and suit should be brought for the amount overdue and unpaid, judgment for the amount of said claim proven to be due and unpaid with a penalty of one per centum of such amount added thereto for each and every month's delay shall be rendered in favor of the plaintiff in such action: Provided further, That the cash order, herein provided for, given for the payment of labor, if the laborer continues to hold the same, in case of the insolvency of the company or person or firm or corporation giving the same, such laborer shall not lose his lien and preference under existing law.

(1881, June 29; P. L. 147, § 5.)

See Crimes, § 631.

[The first four sections of this act have been held to be unconstitutional. *Godcharles v. Wigeman*, 113 Penn. St. 431; s. c., 18 W. N. C. 214; s. c., 6 Atl. Rep. 254. Held constitutional in 2 Am. L. Reg. & Rev. (N. S.) 99.]

IV. MISCELLANEOUS PROVISIONS.

§ 25. From and after the passage of this act, any individual, partnership or corporation, who or which requires from persons in his or its employ, under penalty of forfeiture of part of wages earned by them, a notice of intention to leave such employ, shall be liable to pay to the party injured a sum equal to the amount of said forfeiture, if he or it discharges, without similar notice, a person in such employ, except for incapacity or misconduct, unless in case of a general suspension of labor in his or its mine, shop or factory, or a suspension of work ordered by the employes of such individual, partnership or corporation.

(1887, May 23; P. L. 181, § 1.)

§ 26. Suit may be brought by any person or persons interested under the provisions of the first section of this act before any of the magistrates or justices of the peace of this commonwealth having jurisdiction

for the recovery of the sum or sums of money as are required to be paid by the employer or employers under the first section of this act.

(1887, May 23; P. L. 181, § 2.)

See Corporations, § 80. Factory inspector to bring suit. § 23, ante.

§ 27. It shall be the duty of any corporation, manufacturing establishment or colliery, to retain from and out of the wages or earnings of any person by them employed, on his written order, any contribution or voluntary subscription by such person, made in monthly or other payments, for the support of any hospital or other charitable institution, and the sum so retained to pay over upon demand to such hospital or other charitable institution; and

any payment so made shall be as valid as if paid to the person by whom said wages or earnings were earned: Provided, That the hospital or charitable institution claiming the same shall give notice in writing at least ten days before the time for the payment of said wages or earnings to such corporation, manufacturing establishment or colliery, of the name or names of the person or persons by them employed, who have subscribed to the support of such hospital or charitable institution, and the amount by them severally subscribed, and when or how often payable, and how long to continue, and file said subscription with said corporation, manufacturing establishment or colliery.

(1874, May 15; P. L. 194, § 1.)

See § 21, ante.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1894.

1. To validate acts and conveyances of manufacturing corporations whose charters have expired.
2. To validate titles to real estate which have been held by aliens and corporations.
3. Relating to issue and transfer of stock.
4. Supplementary to General Corporation Law of 1874.
5. Same.
6. Reviving an act to extend time corporations may hold real estate bought under execution.
7. Regulating employment and providing for health of employees.
8. To protect employes in their right to belong to labor organizations.
9. Requiring retention of wages of aliens to pay taxes.
10. To extend time in which foreign corporations may hold real estate bought at sheriff's sale.
11. Requiring bonus on capital stock and increase of stock to be paid in advance.

Act 1.

AN ACT to validate the exercise of franchises of manufacturing corporations whose charters have expired, and to validate the conveyances and other instruments of said corporations.

Section 1. Be it enacted, etc., That no exercise of franchise, grant, bargain and sale, feoffment, deed of conveyance, release, assignment or other assurance of lands, tenements and hereditaments, contract or agreement whatsoever, made, executed and delivered prior to June first, one thousand eight hundred and ninety-five, by any corporation of this commonwealth, or by the successor of any such manufacturing corporation, shall be deemed, held or adjudged invalid or defective or insufficient in law by reason of the expiration of the term of its charter; but all and every such exercise of franchises, grant, bargain and sale, feoff-

ment, deed of conveyance, release, assignment or other assurance, contract or agreement so made, executed and delivered shall be as good, valid and effectual in law and fact as if the charter of such corporation, or of the successor of such corporation, had not expired or had been renewed or extended: Provided however, That such corporation or the successor thereof has accepted the provisions of the Constitution of this commonwealth and of the act of assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four: And provided further, That not more than ten years has elapsed since the expiration of the term of such charter.

(Approved the 16th day of May, A. D. 1895.)

See Corporations, § 106.

Act 2.

AN ACT to enable the citizens of the United States, and corporations chartered under the laws of this commonwealth and authorized to hold real estate, to hold and convey title which had been held by aliens and corporations not authorized by law to hold the same.

Section 1. Be it enacted, etc., That where any conveyances of real estate in the commonwealth have been or shall be made by an alien or any foreign corporation or corporations of another or of this State to any citizen of the United States, or to any corporation chartered under the laws of this

Transfer of stock, etc.—Acts of June 24 and 25, 1895.

commonwealth and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizens or corporation, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly as to any right of escheat in this commonwealth by reason of such real estate having been held by an alien or corporation not authorized to hold the same by laws of this commonwealth.

(Approved the 24th day of June, A. D. 1895.)

See Escheat, § 43.

Act 3.

AN ACT relating to and regulating the issue and transfer of certificates of stock by companies incorporated under the laws of this commonwealth.

Section 1. Be it enacted, etc., That any stockholder of any company incorporated under the laws of this commonwealth shall be entitled to receive a certificate of the number of shares standing to his, her or their credit on the books of the corporation, which certificate shall be signed by the president or vice-president or other officer designated by the board of directors, countersigned by the treasurer and sealed with the common seal of the corporation, which certificate or evidence of stock ownership shall be transferable on such books at the pleasure of the holder, in person or by attorney, duly authorized as the by-laws may prescribe, subject however to all payments due or to become due thereon; and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation and have and enjoy all the immunities, privileges and franchises and be subject to all of the liabilities, conditions and penalties incident thereto, in the same manner as the original subscriber or holder would have been. And upon a sale of such stock in satisfaction of any debt for which it is pledged the purchaser shall have the right to compel a transfer of such stock upon the corporation books and the delivery of a proper certificate therefor.

§ 2. That all laws or parts of laws inconsistent herewith be and the same are hereby repealed.

(Approved the 24th day of June, A. D. 1895.)

See Corporations, §§ 38-39.

Act 4.

A FURTHER SUPPLEMENT TO "AN ACT to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four.

Section 1. Be it enacted, etc., That all corporations organized not for profit, under the

provisions of "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four and the several supplements thereto, shall have authority, if a majority of its members shall so ordain, to issue capital stock to an amount not exceeding two hundred and fifty thousand dollars, in shares of the par value of fifty dollars. Said power to vest upon the recording of the minute authorizing said issue in the county in which the corporation was created, and filing an exemplification thereof with the secretary of the commonwealth. Thereafter such corporations shall be subject to the same taxation as corporations for profit.

§ 2. That the charters of all manufacturing corporations granted in accordance with the provisions of the present Constitution of this commonwealth, and the act of general assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, and the charters of all manufacturing corporations that have accepted the provisions of the said Constitution and act of assembly, which charters were limited in their duration by the articles of association or by the act of assembly under which they were granted, and have now expired or shall hereafter expire, are hereby extended for a period of twenty-five years from the date of the expiration of said charters: Provided, That a bona fide organization has taken place and business has been commenced in good faith within a period of two years from the date of the granting of said charters: Provided further, That manufacturing concerns availing themselves of the provisions of this act shall first pay into the treasury of this commonwealth the fee and bonus upon their capital stock now fixed by law for the renewal or extension of a corporate charter: And provided further, That upon the payment of said fees and bonus and the production to the secretary of the commonwealth of evidence that the terms of this act have been complied with, letters-patent shall issue to said manufacturing corporation.

(Approved the 25th day of June, A. D. 1895.)

Capital stock. See Corporations, §§ 38 et seq.; Iron and Steel Manufacturing Companies, §§ 1 et seq.; Manufacturing Companies, §§ 1 et seq.

Act 5.

AN ACT being a further supplement to an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, to further provide for the incorporation and regulation of corporations heretofore or hereafter incorporated for the purpose of the supply, storage or

Water companies; extension, etc.—Acts of July 2, 1895; April 20, 1897.

transportation of water and water power for commercial and manufacturing purposes.

Section 1. Be it enacted, etc., That corporations heretofore or hereafter incorporated under the act of assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, and the supplements thereto, for the supply, storage or transportation of water and water power for commercial and manufacturing purposes, be and the same are hereby authorized and empowered to determine the character, design and construction of the works and the use to be made of the water and water power of such companies, in order that the same may be supplied to the public to the best advantage, and by themselves, their agents, engineers and workmen, cause to be located, constructed, maintained, repaired and operated under the law and supplements to which this is a further supplement, the said works and all machinery, dams, buildings, cisterns, races, canals, waterways, reservoirs, pipes, conduits, lines, plants, apparatus, fixtures and appliances deemed necessary, requisite and proper for said purposes, and it shall and may be lawful for such corporations from time to time to contract with any individual or corporation of this or any other State for the construction, operation, use and maintenance of their works or any part thereof as aforesaid, and to mortgage their said property, real, personal and mixed, and franchises to any person or corporation of this State or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of such water and water power company to be performed, including the guaranty of the payment of the bonds and interest thereon of any other corporation, party to such contract, and the stock in any company incorporated for the purposes named in this act may be owned and held by corporations of this or other States of the United States.

(Approved the 2d day of July, A. D. 1895.)

Act 6.

AN ACT to revive and continue in force provisions of an act, entitled "An act to extend the time which corporations may hold and convey the title to real estate heretofore bought under execution, or conveyed to them in satisfaction of debts and now remaining in their hands unsold," approved the 18th day of May, Anno Domini one thousand eight hundred and ninety-three.

Section 1. Be it enacted, etc., That the provisions of the act, entitled "An act to ex-

tend the time during which corporations may hold and convey the title to real estate heretofore bought under execution, or conveyed to them in satisfaction of debts and now remaining in their hands unsold," approved the eighteenth day of May, Anno Domini one thousand eight hundred and ninety-three, which provides "that the time during which all corporations are authorized by law and their charters to hold and convey real estate acquired by them under execution, or in satisfaction of debts, be and the same is hereby extended to all property heretofore bought and now held by such corporations for and during a further period of five years from and after the expiration of the time during which, as aforesaid, they are now so authorized to hold and convey the same," be and the same are hereby revived, continued and extended for a further period of five years from and after the time for which they are now authorized by law to hold the same.

(Approved the 20th day of April, A. D. 1897.)

Act 7.

AN ACT to regulate the employment and provide for the health and safety of men, women and children in manufacturing establishments, mercantile industries, laundries, renovating works or printing offices, and to provide for the appointment of inspectors, office clerks, and others to enforce the same.

Section 1. Be it enacted, etc., That no minor, male or female, or adult woman shall be employed at labor or detained in any manufacturing establishment, mercantile industry, laundry, workshop, renovating works or printing office for a longer period than twelve hours in any day, nor for a longer period than sixty hours in any week.

§ 2. (As amended by chapter 123, June 14, 1897.) No child under thirteen years of age shall be employed in any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office within this State. It shall be the duty of every person so employing children to keep a register in which shall be recorded the name, birthplace, age and place of residence, name of parent or guardian, and date when employment ceases, of every person so employed by him under the age of sixteen years. And it shall be unlawful for any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office, to hire or employ any child under the age of sixteen years, without there is first provided and placed on file an affidavit made by the parent or guardian, stating the age, date and place of birth of said child. If said child have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer and shall be returned to the child when employ-

Factories; inspection — Act of April 29, 1897.

ment ceases; and in no case shall there be a charge to exceed twenty-five cents for administering the oath for the issuing of the above certificate. And after the first day of January, one thousand eight hundred and ninety-eight, it shall be unlawful for any manufacturing establishment, mercantile industry, laundry, renovating works, printing office, mechanical or other industrial establishment to employ any minor under the age of sixteen years who cannot read and write in the English language, unless he presents a certificate of having attended during the preceding year, an evening or day school for a period of sixteen weeks. Said certificate shall be signed by the teacher or teachers of the school or schools which said minor attended, and said register, affidavit and certificates shall be produced for inspection on demand by the inspector or any of the other deputies appointed under this act.

§ 3. Every person, firm or corporation employing men, women or children, or either, in any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office shall post and keep posted in a conspicuous place in every room where such help is employed, a printed notice, stating the number of hours per day for each day of the week required of such persons; and in every room where children under sixteen years of age are employed a list of their names with their age.

§ 4. Every person, firm, association, individual, partnership or corporation employing girls or adult women in any manufacturing, mechanical or mercantile industry, laundry, workshop, renovating works or printing office in this State, shall provide suitable seats for the use of the girls and women so employed, and shall permit the use of such by them when they are not necessarily engaged in the active duties for which they are employed.

§ 5. It shall be the duty of the owner, agent or lessee on any such factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office where hoisting shafts or well-holes are used, to cause the same to be properly and substantially inclosed or secured, if in the opinion of the inspector it is necessary to protect the life or limbs of those employed in such establishments. It shall be the duty of the owner, agent or lessee to provide, or cause to be provided, such proper trap or automatic doors, so fastened in or at all elevator ways, as to form a substantial surface when closed, and so constructed as to open and close by action of the elevator in its passage, either ascending or descending.

§ 6. It shall also be the duty of the owner of such factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office, or his agent, superintendent or other person in charge of the same, to furnish and supply, or cause to be

furnished or supplied, in the discretion of the inspector where dangerous machinery is in use, automatic shifters or other mechanical contrivances for the purpose of throwing on or off belts or pulleys. And no minor under sixteen years of age shall be allowed to clean machinery while in motion. All gearing and belting shall be provided with proper safeguards.

§ 7. It shall be the duty of the owner or superintendent to report in writing to the factory inspector, all accidents or serious injury done to any person employed in such factory, within twenty-four hours after the accident occurs, stating as fully as possible the cause of such injury.

§ 8. A suitable and proper wash and dressing room, and water closets shall be provided for males and females where employed, and the water closets, wash and dressing rooms used by females shall not adjoin those used by males, but shall be built entirely away from them, and shall be properly screened and ventilated, and at all times kept in a clean condition.

§ 9. Not less than forty-five minutes shall be allowed for the noonday meal in any manufacturing establishment in this State. The factory inspector, his assistant or any of his deputies, shall have power to issue permits in special cases, allowing a shorter meal time at noon, and such permit must be conspicuously posted in the main entrance of the establishment, and such permit may be revoked at any time the inspector deems necessary, and shall only be given where good cause can be shown.

§ 10. That if the factory inspector, or any of his deputies, finds that the heating, lighting, ventilation, or sanitary arrangement of any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office is such as to be injurious to the health of persons employed therein, or that the means of egress, in case of fire, or other disaster, is not sufficient, or in accordance with all the requirements of law, or that the belting, shafting, gearing, elevators, drums and machinery in any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office are located so as to be dangerous to employees and not sufficiently guarded, or that the vats, pans, or structures filled with molten metal or hot liquid are not surrounded with proper safeguards for preventing accident or injury to those employed at or near them, he shall notify the proprietor of such factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office, to make the alterations or additions necessary within sixty days, and any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office requiring exits or other safeguards provided for in fire-escape law, the same shall be erected and located by order of fac-

Factories, etc.; labor unions, etc.—Acts of June 4 and 7, 1897.

tory inspector regardless the exemption granted by any board of county commissioners, fire marshal or other authorities, and if such alterations and additions are not made within sixty days from the date of such notice, or within such time as said alterations can be made with proper diligence upon the part of such proprietors, said proprietors or agents shall be deemed guilty of violating the provisions of this act.

§ 11. It shall be the duty of the owner or owners of boilers used for the generating of steam to be applied to machinery in all industrial institutions subject to factory inspection, to furnish from time to time, as required by the factory department, reports or other evidence from competent authority as to the condition of the boilers used for the generating of steam, to the State factory inspector. He or his deputies or other agents shall have the right, from time to time, to enter upon the premises where such boiler or boilers are kept for the purpose of inspecting the same and determining their safety, and if any such boiler or boilers shall be found to be in a dangerous condition and liable to explode, it shall be the duty of the factory inspector, or one of his deputies, to notify the owner or owners thereof, his or their agent or engineer in charge, of such dangerous condition, and when so notified by the State factory inspector, his deputy or other agent, it shall be the duty of the owner or owners thereof to immediately cease the use of said boiler or boilers until placed in safe condition.

§ 12. The factory inspector, in order to more effectually carry out the provisions of this law, is hereby authorized to appoint a chief clerk for the department at a salary of fourteen hundred dollars per year, an assistant clerk at one thousand dollars per year, and a messenger at six hundred dollars per year.

§ 13. A printed copy of this act shall be furnished by the inspector for each work-room of every factory, manufacturing or mercantile industry where persons are employed who are affected by the provisions of this act, and it shall be the duty of the employer of the people therein to post and keep posted said printed copy of the law in each room.

§ 14. Any person who violates any of the provisions of this act or who suffers or permits any child or female to be employed in violation of its provisions, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than five hundred dollars.

§ 15. All the acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

(Approved the 29th day of April, A. D. 1897.)

Act 8.

AN ACT to protect employes of corporations in their right to form, join or belong to labor organizations by prescribing penalties for any interference therewith.

Section 1. Be it enacted, etc., That if any officer, agent or employe of any corporation chartered under the laws of this commonwealth, or any foreign corporation doing business in this commonwealth, shall coerce or attempt to coerce any employe of such corporation by discharging them or threatening to discharge them from employment of such corporation because of their connection with any lawful labor organization which such employe may have formed, joined or belonged to, or if any such officer, agent or employe shall exact from any applicant for employment in such corporation any promise or agreement not to form, join or belong to such lawful labor organization, or not to continue a member of such lawful labor organization, or if any such officer, agent or employe shall in any way prevent or endeavor to prevent any employe from forming, joining or belonging to such lawful labor organization, or shall interfere or attempt to interfere by any other means whatsoever, direct or indirect, with any employe's free and untrammelled connection with such lawful labor organization he or they shall be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not more than two thousand nor less than one thousand dollars (\$1,000), and imprisonment for a term not exceeding one year, or either, or both, in the discretion of the court.

§ 2. All acts or parts of acts inconsistent herewith are hereby repealed.

(Approved the 4th day of June, A. D. 1897.)

Act 9.

AN ACT requiring the retention by employers of aliens, sums sufficient to pay the taxes respectively assessed against such alien employes, upon notice in writing from tax collectors, and directing the payment thereof to the said tax collectors within sixty days after such notice shall have been given.

Section 1. Be it enacted, etc., That from and after the passage of this act all corporations, associations, companies, firms or individuals employing persons who are not citizens of the United States shall, upon the receipt of a written notice from the tax collector of the county or district in which such taxes was assessed, containing the name or names of the taxable or taxables and the amounts respectively due, deduct from the wages or earnings of such employe or employes a sum sufficient to pay the respective amounts of taxes assessed against each of such alien employes, and pay the

Extension; increase of capital, etc.—Acts of June 8 and 15, 1897.

same to the collectors of the district in which said aliens are employed within sixty days after said notice shall have been given.

§ 2. Any corporation, association, company, firm or individual failing to comply with the provisions of this act shall forfeit and pay the sum of double the amount of the tax for each and every taxable whose taxes are not withheld and paid over as herein directed, to be recovered by action of assumpsit as debts of like amount are now by law recoverable, and when collected shall be paid into the treasury of the county in which such alien labor is or was employed for the use of such county.

§ 3. All acts or parts of acts inconsistent herewith are hereby repealed.

(Approved the 7th day of June, A. D. 1897.)

Act 10.

AN ACT to extend for a further period of five years, the time during which corporations, incorporated and existing under the laws of any other State of the United States, are now authorized by law to hold real estate heretofore purchased at sheriff's or other judicial sales.

Section 1. Be it enacted, etc., That the time during which any corporation, incorporated and existing under the laws of any other State of the United States and doing business in this State, and having therein one or more known places of business, and an authorized agent or agents upon whom process may be served, is now authorized by law to hold real estate heretofore purchased according to law at any sheriff's or other judicial sale, and upon which such corporation may have held any mortgage, judgment or lien, be and said time hereby is extended for a further period of five years.

(Approved the 8th day of June, A. D. 1897.)

Act 11.

AN ACT to amend the forty-fourth section of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, requiring the bonus on charters and on the increase of capital stock to be paid in advance, and providing for an increase of bonus.

Section 1. Be it enacted, etc., That section forty-four of an act, entitled, "An act to provide for the incorporation and regulation

of certain corporations," approved April twenty-nine, one thousand eight hundred and seventy-four, which reads as follows: "Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all those corporations named in the first class of section two of this act, shall pay to the State treasurer, for the use of the commonwealth, a bonus of one-quarter of one per centum upon the amount of the capital stock which said companies authorized to have, in two equal installments, and a like bonus on any subsequent increase thereof. The first installment shall be due and payable upon the incorporation of said company, or upon the increase of the capital thereof, and the second installment one year thereafter. And no company as aforesaid shall have or exercise any corporate powers until the first installment of said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the first installment of said bonus has been paid to the State treasurer. And no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said first installment of bonus has been paid as aforesaid," be so amended as to read as follows:

Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all those corporations, named in the first class of section two of this act, shall pay to the State treasurer, for the use of the commonwealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof. And no company as aforesaid shall have or exercise any corporate powers until the said bonus is paid, and the governor shall not issue letters-patent to any company until he is satisfied that the said bonus has been paid to the State treasurer. And no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said bonus has been paid. The secretary of the commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said increase has been paid to the State treasurer.

(Approved the 15th day of June, A. D. 1897.)

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RHODE ISLAND.

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RHODE ISLAND.

CONSTITUTION OF RHODE ISLAND — 1842.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

§ 12. No * * * law impairing the obligation of contracts, shall be passed.

Charter may be amended, or repealed. Ch. 177, § 22.

§ 16. Private property shall not be taken for public uses, without just compensation.

See next section, and G. L., ch. 21, § 2.

ARTICLE IV.

Legislative Power.

§ 17. (As amended November 8, 1892.) Hereafter the general assembly may provide by general law for the creation and control of corporation: Provided, however, That no corporation shall be created with the power to exercise the right of eminent domain, or to acquire franchises in the streets and highways of towns and cities, except by special act of the general assembly upon a petition for the same, the pendency whereof shall be notified as may be required by law.

General laws for creating corporations. Ch. 176; see ch. 21, § 2.

Petitions; construction; taxation — G. L., tit. 4, ch. 21, § 2; ch. 26, §§ 5, 14, 15; tit. 5, §§ 16, 17.

GENERAL LAWS OF RHODE ISLAND — 1896.

TITLE IV. OF LEGISLATIVE PROCEEDINGS AND STATUTES.

- Ch. 21. Of petitions to the general assembly.
26. Of the construction of statutes.

CHAPTER XXI.

Of Petitions to the General Assembly.

- Sec. 2. Notice for petitions for corporations with extraordinary powers, how and when to be given.

§ 2. Whenever any bill shall be presented to either house of the general assembly to create a corporation which shall be authorized to exercise the right of eminent domain, or which shall have the right to acquire franchises in the streets and highways of any city or town, notice of the pendency of the petition for the passage of such bill shall be given, by the petitioners therefor, in some newspaper published in the city of Providence and also in some newspaper published in the town or county where such corporation is sought to be located (or, if there be no newspaper published in such town or county, then in some newspaper published in an adjoining town or county,) for three weeks successively after the presentation of such bill; and such notice shall specify the purpose of such corporation, the place where it is intended to be established, and the towns or cities where such right is to be exercised or such franchises are to be acquired.

See Const., art. IV, § 17.

[If petitions for act of incorporation use a term, and expressly, or by plain implication, define its extent in their petition, such definition may be resorted to, to explain the meaning of the term of the charter. *Lime Rock Co. v. Dexter*, 6 R. I. 353.]

CHAPTER XXVI.

Of the Construction of Statutes.

- Sec. 5. "Person" includes corporation.
14. "Seal."
15. Acts of incorporation are public acts for purpose of pleading.

§ 5. The word "person" may be construed to extend to and include copartnerships and bodies corporate and politic.

Corporations classified. Ch. 176, § 1.

§ 14. Whenever a seal is required to be affixed to any paper, the word "seal" shall

be construed to include an impression of such seal made with or without the use of wax or wafer on the paper.

Corporate seal. Ch. 177, § 1.

§ 15. Every act of incorporation shall be so far deemed a public act, that the same may be declared on and given in evidence, without specially pleading the same.

TITLE V. OF THE PROPERTY AND REVENUE OF THE STATE.

CHAPTER XXIX.

Of the Revenue of the State.

- Sec. 16. Corporations to pay tax before organization; tax not paid, how collected.
17. Same.
18. Same.

§ 16. No corporation other than a corporation for religious, literary, or charitable purposes, or a military or fire company, shall be organized under a charter granted by special act of the general assembly, until the petitioners for the same shall pay into the general treasury, for the use of the State, one hundred dollars, and in addition one-tenth of one per centum upon any amount of capital stock exceeding one hundred thousand dollars authorized by such charter; and every corporation which shall increase its capital stock shall pay to the general treasury, for the use of the State, one-tenth of one per centum upon such increase; and the secretary of State shall not issue a certified copy of any act creating such corporation, or providing for such increase of capital stock, until he shall receive the certificate of the general treasurer to the effect that the sum so required has been paid.

[It is not competent for a stockholder to avoid payment of an execution levied upon his property, upon ground that the fee required by law to be paid into the State treasury before charter of the corporation should take effect, has not been paid, because he is, as a member of the supposed corporation, estopped, when pursued by a creditor thereof, from denying its existence. *Slocum v. Providence, etc., Co.*, 10 R. I. 112; *Same v. Warren*, id. 116.]

Under the general statutes of 1872, a charter previously granted is valid, notwithstanding the failure of the chartered corporation to make the payment required by above section. *Mfg. Co. v. Vanner*, 12 R. I. 491.]

§ 17. If any corporation shall neglect for the space of thirty days to pay the duty imposed upon such corporation, the general

Taxation — G. L., tit. 8, ch. 44, §§ 2, 4, 5; ch. 45, § 10; ch. 46, §§ 11, 12.

treasurer shall issue his warrant of distress against the same, directed to the sheriff or his deputy of the county in which such corporation is located, for the amount of such duty; commanding him, in the name of the State, to collect from such corporation said amount, with interest thereon from the time the same was payable to the time of its receipt by such officer, with his lawful fees, and to make return thereof within ninety days from the date of such warrant.

§ 18. The officer charged with the service of such warrant shall levy and collect the sum therein named, by attachment and seizure of the real and personal estate of the corporation against whom such warrant was issued, and shall sell the same at public auction, giving thirty days previous notice of the time and place of such sale, by posting up two notices in the town in which such corporation is located; and a deed of such estate made by such officer shall vest in the purchaser all the right, title and interest which such corporation had therein at the time of the attachment and seizure thereof.

TITLE VIII. OF THE LEVY, ASSESSMENT AND COLLECTION OF TAXES.

Ch. 44. Of property liable to and exempt from taxation.
45. Where and to whom property is taxable.
46. Of the levy and assessment of taxes.

CHAPTER XLIV.

Of Property Liable to and Exempt from Taxation.

Sec. 2. Property exempt from taxation.
4, 5. Manufacturing property may be exempt from taxation.

§ 2. * * * No property or estate whatever shall hereafter be exempt from taxation, in any case, where any part of the income or profits thereof or of the business carried on thereon, is divided among its owners or stockholders; * * *

§ 4. The electors of any town or city qualified to vote on a proposition to impose a tax, when legally assembled, may vote to exempt, or may authorize the town or city council of such town or city, for a period not exceeding one year, to exempt from taxation for a period not exceeding ten years, such manufacturing property as may hereafter be located in said town or city in consequence of such exemption, and the land on which such property is located.

§ 5. Property so exempted under the preceding section shall not, during such period of exemption, be liable to taxation while such property is used for the purposes for which it was so located.

CHAPTER XLV.

Where and to Whom Property is Taxable.

Sec. 10. Personal property includes what.

§ 10. Personal property, for the purposes of taxation, shall be deemed to include * * *

all stocks or shares in any bank or banking association; in any turnpike, bridge or other corporation within or without this State, except such as are exempt from taxation by the laws of this State: Provided, That no shareholder shall be liable to taxation for shares held in any corporation within this State which in its corporate capacity is taxed within this State for an amount equal to the value of its property, or in any corporation without this State which is, or the shares in which are, liable to taxation in the State where such corporation is located; * * *

Corporate stock is personal estate. Ch. 177, § 2.

[A tax upon shares of stock of a manufacturing corporation, which had already been taxed in another State, held to be constitutional and valid. *Dyer v. Osborne*, 11 R. I. 321.]

A corporation rendering an account of its personality as "no ratable personal estate over and above the actual indebtedness of the company," held, that the account rendered did not comply with the statute. Held, further, that the company had no remedy against an assessment on its personality made by the assessors of taxes. *Coventry v. Assessors*, 16 R. I. 240; s. c., 14 Atl. Rep. 877.]

CHAPTER XLVI.

Of the Levy and Assessment of Taxes.

Sec. 11. Corporations to make returns of amount of stock, etc., to assessors of taxes.
12. Shares in, how taxed.

§ 11. The assessor of any town may, by written demand, require any corporation in this State to make return to them in writing, within twenty days after such demand is made, of the amount and par value of the stock owned in such corporation by any stockholder, residing in the town represented by such assessors, the name of such stockholder being specified in such written demand; and if any corporation shall refuse or neglect, after such demand, to make such return within the time aforesaid, it shall forfeit the sum of one hundred dollars for the use of the town whose assessors make such demand, to be recovered of such corporation by an action of debt in the name of the town treasurer of such town.

[See *Mfg. Co. v. Newell*, 15 R. I. 233; s. c., 2 Atl. Rep. 766.]

§ 12. Every corporation which is by law required to make returns to the assessors of any town shall return the par value and the cash market value of the shares of said corporation, and the proportionate amount per share at which its real estate and machinery, if any, were last assessed, and the stockholders in any corporation or national banking association shall be taxed only for the difference between the cash market value of each share by them held, and the proportionate amount per share at which its real estate and machinery, if any, were last assessed.

[See *Mfg. Co. v. Newell*, 15 R. I. 233; s. c., 2 Atl. Rep. 766.]

Business corporations; articles of agreement, etc.—G. L., tit. 17, ch. 176, §§ 1-4.

TITLE XVII. OF THE REGULATIONS OF TRADE.

CHAPTER CLIX.

Of Auctioneers.

Sec. 10. Officers of a corporation not to act as auctioneer at foreclosure sale of mortgage by it.

§ 10. No officer of any corporation shall act as auctioneer in the foreclosure of any mortgage held by such corporation.

TITLE XIX. OF CORPORATIONS.

- Ch. 176. Of incorporation.
177. Provisions respecting corporations in general.
180. Of manufacturing corporations.

CHAPTER CLXXVI.

Of Incorporation.

- Sec. 1. Corporations classified and how formed.
2. Business corporations are formed by what articles of agreement.
3. Articles of agreement, how executed; and, with certificate of fee paid, where filed.
4. Certificate of incorporation.
5. Certificate confers what powers.
6. Organization of corporation.
7. Capital stock may be increased.
8. Capital stock may be decreased.
9. Lien on shares, and right of pre-emption, may be provided for in original articles.
10. Corporations for insurance, banking, etc., must be chartered specially.
15. Certified copies of incorporation are admissible in evidence.

Section 1. The several classes of corporations shall be formed according to the methods herein prescribed.

See Const., art. IV, § 17, and G. L., ch. 21,
§ 2. Insurance and banking corporations excepted. § 10, post.

CLASS I. BUSINESS CORPORATIONS.

§ 2. Any three or more persons of lawful age who shall associate by written articles which shall express:

First. Their agreement to constitute an ordinary business corporation;

Second. The name by which it shall be known, which shall be one that cannot be mistaken for that of a co-partnership, and which name is not then in use by an existing corporation incorporated by special act or under the general laws of this State;

Third. The business for which it is constituted;

Fourth. The town or city in which it is to be located;

Fifth. The amount of the capital stock, and whether common or preferred, and how much of each, and the par value of each share, and, if preferred, the advantages thereof over the common stock, shall, upon complying with the requirements hereinafter provided, be and become a cor-

poration for the transaction of the business named in said articles of agreement: Provided, however, That nothing herein contained shall authorize the formation of any municipal or quasi-municipal corporation, railway company, canal company, turnpike company, or of any company which shall need to possess the right to take or condemn lands or other property under the power of eminent domain, or to acquire franchises in the streets or highways of towns or cities, or of any insurance company, bank or banking corporation, savings bank, trust company, or any other corporation trading in bonds, notes or other evidences of indebtedness, in any manner other than is herein-after provided.

Increase or decrease of capital stock. §§ 7, 8, post.

§ 3. Said corporators shall sign said agreement stating their residences against their names, shall acknowledge the same in the manner in which deeds of real estate are required to be acknowledged within this State, and shall file the same in the office of the secretary of State, together with the certificate of the general treasurer that said corporators have paid into the treasury for the use of the State the sum of one hundred dollars; or if the capital stock of said corporation is to be one hundred thousand dollars, or more, have paid into the treasury a sum equal to one-tenth of one per centum of said capital stock.

§ 4. Whenever the agreement, duly signed and acknowledged, and the certificate of the general treasurer, as required by sections two and three of this chapter, shall have been filed in the office of the secretary of State, and the sum of one dollar paid to said secretary for the certificate hereinafter provided for, said secretary of State shall thereupon issue to said corporation his certificate, under the seal of the State, substantially in the following form:—

State of Rhode Island and Providence Plantations.

I,, secretary of State, hereby certify that (here insert names of all corporators) have filed in the office of secretary of State according to law, their agreement to form a corporation under the name of (here insert name of corporation) for the purpose (here insert the business) and with the capital stock (here insert amount) and have also filed the certificate of the general treasurer that they have paid into the general treasury of the State the fee required by law.

Witness my hand and the seal of the State of Rhode Island this day of in the year

Above certificate prima facie evidence. § 15, post.

Certificate; first meeting; amendment — G. L., tit. 17, ch. 176, §§ 5-10, 15.

§ 5. When said certificate has been issued as aforesaid, said corporators, their associates, successors and assigns, shall be authorized to transact business as a corporation, with all the powers and subject to all the duties and liabilities, as provided in chapters one hundred seventy-seven and one hundred eighty, and all amendments thereof and additions thereto, so far as not inconsistent with the provisions of this chapter.

General powers. Ch. 177, § 1.

[It does not require a unanimous vote to surrender the franchise of a corporation. The wish of a great majority is sufficient. *Wilson v. Central Bridge*, 9 R. I. 590. Such surrender must be accepted by the State. *Id.*]

§ 6. The meeting of said corporators to form said corporation shall be called by a notice signed by one or more of said corporators, stating the time, place and purpose of meeting, a copy of which shall be mailed, at least five days before the day appointed for the meeting, to each corporator addressed to his usual place of business or residence; which notice may be given as soon as said agreement and the certificate of the general treasurer have been filed with the secretary of State; Provided, however, That said first meeting may be held by agreement in writing of all the corporators without such notice; said first meeting to be held in any event subsequent to the issuing of said certificate by the secretary of State. Said notice, with the affidavit of the corporator who mailed copies thereof, and, in the event of no notice being sent, the unanimous agreement to meet, shall be filed with the papers of said corporation and duly recorded in its records.

§ 7. Whenever a corporation is created as provided in the preceding sections, and more capital than the amount prescribed in the articles of agreement shall be necessary or desirable, such articles may be amended in pursuance of a vote therefor representing in amount three-quarters of the whole capital stock, passed at a meeting of the corporation duly called for that purpose, by the filing, in the office of the secretary of State, of a certificate of such vote duly attested by the president and secretary of said corporation, together with the certificate of the general treasurer that said corporation has, with previous payments to the general treasurer, paid into the treasury, for the use of the State, a sum equal to one-tenth of one per centum of its capital stock when so increased. Such vote shall set forth the amount, the par value, and kinds, of additional stock and the advantages of the preferred, if any, over the common stock. Such agreement may be amended in any other particular, excepting as provided in the following section, by like vote of the corporation and the filing in the office of

the secretary of State of a copy of such vote duly attested by the president and secretary of said corporation.

See ch. 177, § 24.

§ 8. Whenever a corporation is created as provided in the preceding sections, and it is deemed necessary or desirable to decrease the amount of capital stock of the corporation in the articles of agreement or any amendment thereof, said articles may be so amended in pursuance of a vote therefor representing in amount three-quarters of the whole capital stock, passed at a meeting of the corporation duly called, when a copy of such vote, duly attested by the president and secretary of said corporation, has been duly filed in the office of the secretary of State; and the secretary of such corporation shall immediately notify in writing every stockholder of record of such decrease, and each stockholder shall forthwith present his certificate or certificates, to be exchanged for others, or to have endorsed thereon proper evidence of the decrease of the par value thereof, as the case may be.

See ch. 177, § 24.

§ 9. Any original articles of incorporation, as prescribed in the previous sections, may provide, if desired, that the corporation shall have a lien on all shares for assessments or other indebtedness of the shareholders due to the corporation, enforceable in such manner as the by-laws shall provide; and may give the corporation the right, in case of sale of stock by any stockholder, to purchase said stock at the lowest price at which he is willing to sell, before the same shall be sold by him to any other party, and may prescribe the time within which the corporation must exercise said right.

[See *Sweetland v. Quidntek Co.*, 11 R. I. 328; *Barrows v. Rubber Co.*, 12 *Id.* 173; *Same v. Same*, 13 *Id.* 48; *Bank v. Mills*, 17 *Id.* 351; s. e., 23 *Atl. Rep.* 795.]

CLASS II. INSURANCE AND BANKING CORPORATIONS.

§ 10. Every corporation to carry on the business of insurance or banking, or of trading in bonds, notes or other evidences of indebtedness, shall be created only by the general assembly on petition thereto.

CLASS III. MISCELLANEOUS CORPORATIONS.

§ 15. Copies of agreement to form corporations, when formed by agreement, or of any amendment thereof, and the fact of their being filed in the office of the secretary of State and the date of such filing, and the filing of the certificate of the general treasurer, shall, when certified to by the secretary of State, be received in evidence before any court, tribunal or authority.

CHAPTER CLXXXVII.

Provisions Respecting Corporations in General.

- Sec. 1. General powers of corporations.
 2. Shares are personal estate, unless, etc.; are transferable as prescribed by the by-laws.
 3. By-laws may include what, conforming to law: voting by proxy; voting by executors, trustees, etc.
 4. First meeting, how called; excepting banks.
 5. Meeting, how called if no person is duly authorized.
 6. Powers of corporations so assembled.
 7. Failure to hold annual meeting or to elect officers.
 8. Gifts to corporations by will, for charitable purposes, in excess of power to hold.
 9. Corporation to continue such for three years after dissolution, for what purposes.
 10. What properties may be levied on, on executions against any corporation authorized to receive tolls.
 11. Who deemed highest bidder on sale of franchise of any corporation.
 12. Franchise, how transferred.
 13. Purchaser is entitled to recover penalties for injury to franchise.
 14. Corporation retains powers, how far.
 15. Franchise may be redeemed.
 16. Franchise and property of railroad corporation may be redeemed from sale on execution; how.
 17. Rights and duties of purchasers of railroad and street railway property, by foreclosure or under judicial sale.
 18. Such purchasers may dispose of such property to certain corporations, and receive, in payment therefor, stock or bonds of such corporations.
 19. Record of transfer of stock, where kept; recording officer to be resident of the State.
 20. Of transfer of stock in corporations.
 21. Place of business, and resident agent.
 22. Charters, etc., may be amended, etc.
 23. Corporations created by charter to organize within two years, or incorporation is void.
 24. Certificate of organization, or of increase of capital stock.
 25, 26. Corporations and cities, to pay employees weekly; penalty.
 27-30. Dissolution of corporations, and appointment of receiver; powers and duties of receiver; jurisdiction of appellate division.

Section 1. All corporations shall, whenever no other provision is specially made, (1) have perpetual succession.

Charters may be amended or repealed. § 22, post. Corporation continues three years after dissolution. § 9, post.

2. May make and use a common seal and break, alter and renew the same,

"Seal" defined. Ch. 26, § 14.

3. Be capable of taking, holding, transmitting and conveying property, real or personal, in their corporate name,

Amount allowed to hold. § 8, post. What property may be levied on. § 10, post. Liens on corporate property. Ch. 206, § 14.

4. May sue and be sued, appear, and prosecute and defend actions and suits to final judgment and execution in any court or elsewhere;

Venue of actions brought by or against corporations. Ch. 233, §§ 3, 4, 5. Service of summons upon corporations. Ch. 253, § 2. Foreign, to appoint attorney for process. *Id.*, §§ 36-42. Execution. Ch. 257, §§ 19-23; §§ 19-18, post. Proceedings in insolvency. Ch. 274, § 11. Certified copy of articles prima facie evidence. Ch. 176, § 15. Receiver may conduct suits in name of corporation. § 28, post. Acts of incorporation need not be specially pleaded. Ch. 26, § 15.

[Courts of equity have no jurisdiction over corporations, as such, at suit of a stockholder, for a violation of the charter. *Hodges v. Screw Co.*, 1 R. I. 312.]

A corporation is liable for tort, when. *Clark v. Peckham*, 9 R. I. 455.

Liability for death caused by negligence of agents. *Chase v. Steamboat Co.*, 10 R. I. 79.

When the name and description of a plaintiff corporation leave no doubt of its identity, as the corporation entitled to sue on cause of action, objection that it has not sued by its proper name cannot be taken under general issue, or by plea of null tiel corporation, but only by plea in abatement for a misnomer. *R. R. Co. v. Sherman*, 8 R. I. 564.

In absence of any matter of estoppel, inquiry may be at any time made into the question of whether a company which assumes to act as such has ever been incorporated. *Slocum v. Providence, etc., Co.*, 10 R. I. 112.]

5. May elect, in such manner as they shall determine to be proper, all necessary officers, and may fix their compensation and define their duties and obligations;

See ch. 279, § 20. Election of officers. §§ 3-7. Liability of officers of manufacturing corporation. Ch. 180, §§ 2, 3, 6, 15, 16, 20, 21. Officers required. § 21, post.

[Where salaries are paid to officers to deprive mortgagors of the corporate stock of their share of the profits, they must account for the whole salary. *Eaton v. Robinson*, 31 Atl. Rep. 1058; *s. c.*, 32 *id.* 339.]

6. And may make by-laws and regulations, consistent with law, for their government and for the due and orderly conducting of their affairs and the management of their property.

By-laws may provide, what. § 3, post.

[A partnership by a corporation unlimited by charter is not ultra vires. *Allen v. Woonsocket Co.*, 11 R. I. 288. Nor is payment for services by a share in the profits. *Id.* Nor making a promissory note. *Clark v. School Dist.*, 3 R. I. 199.]

§ 2. The shares into which the capital stock of any corporation shall be divided shall be deemed to be personal estate, unless otherwise provided in the act creating the corporation, and shall be transferable in such

By-laws; first meeting; devises or bequests — G. L., tit. 17, ch. 177, §§ 3-8.

manner as shall be prescribed by the by-laws of the corporation.

See §§ 19, 20, post. Corporate stock taxable as personal estate. Ch. 45, § 10. Lien on shares. Ch. 176, § 9. Execution against shares of stock. Ch. 257, §§ 19-21.

[Shares of stock are personal property and choses in action. *Arnold v. Ruggles*, 1 R. I. 165. A corporation is bound to use reasonable care to protect the title of an equitable owner of its stock against unauthorized transfers. *Peck v. Gas Co.*, 17 R. I. 275; s. c., 21 Atl. Rep. 543; 23 A.2d Rep. 967; see, also, *Bank v. Mills*, 17 R. I. 551.]

§ 3. Corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of shares that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments or other indebtedness of the shareholders due to the corporation, and the tenure of office of the several officers; and they may annex suitable penalties to such by-laws, not exceeding in any case the sum of twenty dollars for any one offense; but no such by-laws shall be made by any corporation repugnant to the provisions or its charter or articles of association, or amendments thereof, or to general laws. At all meetings of corporations having a capital stock, the stockholders may vote in person or by an attorney duly authorized thereto; and where stock is held by two or more executors, administrators, guardians or trustees, jointly, they may designate in writing one of their number to represent said stock and vote the same, unless there is provision to the contrary in the instrument appointing them.

[The legal holder of stock, in whose name the stock stands, may vote thereon at any meeting of the corporation, although he holds the stock in trust, if his cestui que trust is satisfied with his vote. *Wilson v. Central Bridge*, 9 R. I. 590.

In case of dispute as to right to vote at a meeting of a corporation, the books of a corporation are prima facie evidence as to who possessed that right. *Hoplin v. Buffum*, 9 R. I. 513.

And where stock has been in name of "M. Trustee" he is proper person to vote upon it, until the equitable owner, if any there be, shall reasonably assert his right to have it transferred to him. Id.

Naked trustees who hold the legal title to stock, uncoupled with an interest in it, must vote as their beneficiaries direct. If he attends corporate meetings to represent stock, notice of the meetings to the former is immaterial. *Bank v. Mills*, 17 R. I. 551; s. c., 23 Atl. Rep. 795. Executors transferred stock directly to themselves as individuals. Held, that the transfer was unexceptional. Id.

Where statute confers on a corporation power to enact by-laws for certain purposes, it cannot enact by-laws for any other purpose. *Ireland v. Globe, etc., Co.*, 32 Atl. Rep. 921.]

§ 4. The first meeting of all corporations, except of banks, shall, unless otherwise provided for, or unless notice be waived by all

the corporators in writing, be called by a notice signed by any one or more of the corporators, setting forth the time, place and objects of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member or published in some newspaper of the county where the corporation may be established, or if there be no newspaper in the county, then in some newspaper of an adjoining county: Provided, That notice of the first meeting of incorporated religious societies may be affixed to the door or some other conspicuous part of their meeting-house or usual place of assembling for religious purposes.

§ 5. Whenever by reason of the death or absence of the officers of any corporation, or other legal impediment, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace in the county where such corporation is established may, on a written application of three or more of the members thereof, issue a warrant to either of said members, directing him to call a meeting of said corporation by giving such notice as has been previously required by law; and the justice may in the same warrant direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no officer present legally authorized to preside thereat.

§ 6. Such corporation, when so assembled, may elect officers to fill vacancies then existing, and may act upon such other business as might by law be transacted at regular meetings of the corporation.

[The records or minutes of the doings of a corporation, when regularly kept, are prima facie evidence of the corporate proceedings, and of all that may be fairly intended from them. *R. R. Co. v. Sherman*, 8 R. I. 564.]

§ 7. The existence of any corporation shall not be impaired by a failure to hold an annual meeting for the election of officers or a failure to elect officers at the time prescribed by the charter, articles of association or by-laws of the corporation; but such election may be held at a subsequent meeting of the stockholders duly notified for that purpose.

§ 8. In case any real or personal estate shall hereafter be given by will to any corporation to hold for any charitable uses or purposes authorized or permitted by the charter of said corporation or any amendment thereof, or by law, and such corporation, but for the provisions of this section, would not be able to take or hold the same or some part thereof on account of the limitations as to the amount of property of said corporation prescribed by the charter or any amendment thereof, then in every such case it shall be lawful for such corporation to take and hold such real and personal estate, or such part thereof as aforesaid, upon conditions subsequent, nevertheless, that such

Continuance; sale of franchise, etc.—G. L., tit. 17, ch. 177, §§ 9-18.

corporation shall obtain from the general assembly authority to take and hold real and personal estate to an amount large enough to include, in addition to its other property, the property given to such corporation by will as aforesaid, and that the application to the general assembly shall be made within one year from the final probate of the will under which the gift is taken as aforesaid.

§ 9. Corporations whose charters or articles of association shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their concerns, to dispose of and convey their property and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

§ 10. Whenever final judgment shall be recovered against any turnpike or other corporation authorized to receive tolls, the franchise of such corporation, with all the rights and privileges thereof so far as relates to the receiving of toll, and also all other corporate property, may be taken on execution and sold in the same manner as real estate belonging to corporations is liable by law to be taken and sold on execution.

Executions against corporations. Ch. 257, §§ 22, 23.

§ 11. In the sale of the franchise of any corporation, the person who shall satisfy the execution with all legal fees and expenses thereon, and who shall agree in consideration thereof to take such franchise for the shortest period of time and to receive during that time all such toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

§ 12. The return of the officer on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to said corporation so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll-houses and gates belonging to said corporation, in whatever county the same may be situated, and the purchaser may thereupon establish, demand and receive to his own use all the toll which may accrue within the time limited in the said purchase of said franchise, and during that time the corporation shall not be entitled to sue for such tolls or to prosecute for any penalty for the non-payment thereof.

§ 13. Any person who shall purchase the franchise of any turnpike or other corporation, and the assignee of such person, may recover, in an action of the case, any penalties imposed by law for an injury to the

franchise or for any other cause and which such corporation would be entitled to recover during the time limited in the said purchase of the franchise, and during that time the corporation shall not be entitled to prosecute for such penalties.

§ 14. The corporation whose franchise shall have been sold as aforesaid shall, in all other respects, retain the same powers and be bound to the discharge of the same duties and liable to the same penalties and forfeitures as before such sale.

§ 15. Such corporation may, at any time within three months of such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with twelve per centum interest thereon, but without any allowance for toll which he may have received; and upon such payment or tender, the said franchise and all the rights and privileges thereof shall revert and belong to said corporation as if no such sale had been made.

§ 16. The franchise and property of a railroad corporation may be redeemed by it, or any mortgagee thereof, from sale on execution, by paying or tendering to the purchaser the sum paid therefor at such sale, with interest, at any time within sixty days after the final determination of any writ of error to reverse the judgment upon which such execution issued, or of any suit to test the validity of such sale, brought before the sale or within sixty days thereafter; but nothing herein shall be construed as authorizing such a sale.

§ 17. The purchaser of any railroad or street railway and of the property, rights, privileges and franchises therewith connected, at a sale under a valid foreclosure of a legal mortgage thereof, or at a valid sale under the power of sale of such mortgage, or at a valid sale under the orders and directions of any court of competent jurisdiction, and the grantee and successors in title of any such purchaser, shall be subject to all and the same duties, liabilities, restrictions and other provisions respecting such railroad or street railway, or arising from the construction, maintenance and operation thereof, and shall have all and the same powers and rights relating to such railroad or street railway and the construction and maintenance and operation thereof, which the corporation by which said mortgage was made, or which was the owner of such railroad or street railway at the time of such sale, was subject to and had at the time of said sale.

§ 18. Any such purchaser of any such railroad or street railway, and of such property, rights, privileges and franchises, shall have the right and is hereby authorized and empowered to sell, assign, transfer and convey all and singular such railroad or street railway and such property, rights, privileges and franchises so purchased by him, to any legally-organized corporation duly created and

Transfers; certificate of organization; wages — G. L., tit. 17, ch. 177, §§ 19-27.

empowered to construct, maintain and operate a railroad or street railway, and to purchase and maintain and operate and use any such railroad or street railway, and such property, rights, privileges and franchises, upon such terms and conditions as may be mutually agreed upon between such purchaser and such corporation; and the person so selling any such railroad or street railway and such property, rights, privileges and franchises to such corporation, may receive in payment for the same the stock or bonds of such corporation at not less than the par value thereof.

§ 19. All records of transfers of stock of corporations incorporated by the sole authority of this State, shall be made and kept within this State; and the officer of every such corporation, whose duty it may be to record the transfer of shares in the capital stock thereof, shall at the time of his election or appointment be a resident of the State; and whenever such officer shall cease to be a resident therein, his office shall become vacant.

§ 20. The delivery of a certificate of stock of a corporation, transferable only on the books of the corporation on surrender of the certificate, to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be sufficient delivery to transfer the title against all parties; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded, or presented for record, upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred.

[Officer's deed recorded on company's book vests defendant's title to shares without transfer by company. *Lippett v. Paper Co.*, 14 R. I. 301.]

Shares "assignable only on the books" do not pass by assignment not made or recorded on books. *Id.*

No record is required to perfect transfer of stock, unless required by charter or by-laws. *Sayles v. Bates*, 15 R. I. 342; s. c., 5 Atl. Rep. 497.

If, that under conditions in a certain charter, the corporation could not be compelled to transfer upon its books stock sold. *Sweetland v. Quidnick Co.*, 11 R. I. 328.

Transfer of corporate stock with intent to hinder, delay and defraud creditors is void. *Beckwith v. Burroughs*, 14 R. I. 366.]

§ 21. Every corporation created under the authority of this State shall have a place of business within the State and shall have a clerk, treasurer or other agent, who shall reside therein.

Foreign corporation must appoint attorney for process. Ch. 253, § 36.

§ 22. Every corporation hereafter created shall be subject to the provisions of this chapter, and its charter or articles of asso-

ciation may be amended or repealed at the will of the general assembly.

See Const., art. I, § 12.

[See *Gardner v. Ins. Co.*, 9 R. I. 194; *State v. Mfg. Co.*, 18 id. 16; s. c., 25 Atl. Rep. 246.]

§ 23. Corporations created by charter, if no time is limited therein, shall be organized within two years from the passage of their respective acts of incorporation. The charters of all corporations failing to comply with the provisions of this section shall become void.

§ 24. Every corporation created by charter, hereafter organized, or which shall hereafter increase its capital stock, shall, within thirty days after organization or after such increase, file in the office of the secretary of State a certificate, under oath of its treasurer or such officer as may be duly authorized by the corporation to make the same, setting forth the name of the corporation, the date of organization and the amount of capital stock actually paid in upon organization, the amount of increase of capital stock paid in, with the date thereof, the town in which such corporation is located, and the name and post-office address of its treasurer.

Increase and decrease of stock. Ch. 176, §§ 7, 8.

§ 25. Every corporation other than religious, literary or charitable corporations, and every incorporated city, but not including towns, shall pay weekly to the employees engaged in its business the wages earned by them to within nine days of the date of such payment, unless prevented by inevitable casualty: Provided, however, That if at any time of payment any employe shall be absent from his place of labor, he shall be entitled to said payment at any time thereafter on demand.

[See *State v. Mfg. Co.*, 18 R. I. 16; s. c., 25 Atl. Rep. 246.]

§ 26. Any corporation violating any of the provisions of the preceding section shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, one-half thereof to the use of the complainant and the other half to the use of the State: Provided, Complaint for such violation is made within thirty days from the date thereof.

[See *State v. Mfg. Co.*, 18 R. I. 16; s. c., 25 Atl. Rep. 246.]

§ 27. Whenever any corporation is insolvent, or whenever, by reason of the fraud, negligence, misconduct or continued absence from the State of the executive officers of any corporation whose stockholders have neglected, refused, or omitted for an unrea-

Dissolution; manufacturing company — G. L., tit. 17, ch. 177, §§ 28-30; ch. 180, § 1.

sonable time to hold meetings or attend to its concerns, the estate and effects of such corporation are being misapplied or are in danger of being wasted or lost, or whenever any corporation has done or omitted to do any act, which act or omission is ground for the forfeiture of its charter at law, the appellate division of the supreme court may, upon the petition of any stockholder or creditor of such corporation, and upon such reasonable notice as the court may prescribe, decree a dissolution of such corporation and appoint a receiver of its estate and effects, or may appoint such receiver without decreeing a dissolution.

Proceedings in insolvency. Ch. 274, § 11.

§ 28. Such receiver shall take charge of the estate and effects of such corporation and collect the debts and property due and belonging to it, sell, and convert such property into cash; with power to prosecute and defend suits in its name or otherwise, to appoint agents under him, and to do all other acts, which might be done by such corporation, that may be necessary for the final settlement of its unfinished business and the winding up of the corporation. The powers of such receiver may be continued as long as the court deems necessary for said purpose.

§ 29. The receiver shall pay all debts due from such corporation, if the funds in his hands are sufficient therefor, and if not he shall distribute the same ratably among the creditors who prove their debts in the manner directed by any order or decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receiver shall distribute and pay it to and among the stockholders of the corporation or their legal representatives.

§ 30. The court shall have jurisdiction in equity of the application and of all questions arising in the proceedings thereon, and may make such orders and injunctions and decrees therein as justice and equity require.

CHAPTER CLXXX.

Of Manufacturing Corporations.

- Sec. 1. Individual liability of stockholders for debts of corporations.
2. Certificate of payment of capital stock, how made and recorded.
3. Liability for neglect.
4. Of reduction of amount of capital stock.
5. Liability of stockholders, if capital stock be withdrawn before payment of debts.
6. Liability of directors for making a dividend when company is insolvent.
7. Notes given for stock are not to be considered payment.
8. Of appraisal of property of manufacturing corporations.
9. Compensation of the assessors.
10. Certificate to be made and recorded.
11. Annual certificate to be filed by corporation.
12. Liability of the stockholders if certificate is not filed.

Sec. 13. Limitation of liability of members of manufacturing corporations.

14. How stockholder may exempt himself from liability.
15. Debts not to exceed capital stock paid in; liability of directors for excess.
16. Director absent or not assenting may exempt himself from liability.
17. A manufacturing corporation heretofore incorporated may adopt provisions in this chapter, how.
18. Of the certificates required of manufacturing corporations.
19. Estate of manufacturing corporations liable for debts of.
20. Liability of officers for false certificate.
21. Remedy against any officers who are liable for debts of company.
22. Proceedings for enforcement of liability of stockholder.
23. Stockholders liable for contribution.
24. Remedy of officer who has paid debt of company.
25. Persons and property of stockholders exempt, when.
26. Who liable for debts of company, on stock held in fiduciary capacity.
27. Who affected by this chapter.

Section 1. The members of every incorporated manufacturing company shall be jointly and severally liable for all debts and contracts made and entered into by such company, except as hereinafter provided, until the whole amount of the capital stock fixed and limited by the charter of said company, or by a vote of the company in pursuance of the charter or law, shall have been paid in and a certificate thereof shall have been made and recorded in a book kept for that purpose, in the office of the town clerk of the town wherein the manufactory is established, and no longer, except as hereinafter provided.

Limitation of liability. § 13, post. Exemption from. § 14. Enforcement of. §§ 22, 23. Stock held in fiduciary capacity, who liable. § 26.

[Paid corporate stock cannot be assessed without special authority in the charter or by statute. *Atlantic, etc., Co. v. Mason*, 5 R. I. 463. And when so authorized, can be made at a special meeting only when notice is duly given to stockholders of the purpose of the meeting. *Id.*

An illegal assessment on stock cannot be made good, upon the footing of contract, from an assent, to be presumed from assent to former illegal assessment of lesser amount. *Id.*

Personal liability extends to all persons who were stockholders when debt was contracted, and also to all persons who were stockholders when the liability was enforced by legal process, but not to persons becoming stockholders after debt was contracted and ceasing to be such before liability was enforced. *Sayles v. Bates*, 15 R. I. 342; s. c., 5 Atl. Rep. 497.

Trustees and married women obliged to contribute. *Id.* Executors and administrators can plead statute of limitations. *Id.* Debts represented by bonds are contracted when bonds are issued. *Id.* Stockholders, living and dead, held for corporate debts. *Bank v. Steam Factory*, 6 R. I. 154.

It is not competent for a stockholder to avoid payment of an execution levied upon his property upon ground that the fee required to be paid into the State treasury before charter should take effect, had not been paid, because he is, as a member of the supposed corporation, estopped, when pursued by a creditor thereof, from denying its existence. *Slocum v. Providence, etc., Co.*, 10 R. I. 112.

When paid stock may be assessed after alteration of charter. *Gardner v. Ins. Co.*, 9 R. I. 194.

Certificate of capital; liability of officers, etc.—G. L., tit. 17, ch. 180, §§ 2-8.

The corporation is not a necessary party to an action of debt against the stockholders. *Bank v. Angell*, 18 R. I. 1; s. c., 29 Atl. Rep. 500.

A plea to enforce the statutory liability of stockholders cannot be maintained until after judgment against the corporation and execution returned unsatisfied. *Allen v. Arnold*, 31 Atl. Rep. 268.]

§ 2. The president and directors, with the treasurer and clerk of such company, within ten days after the payment of the last installment of the capital stock fixed and limited by the charter or by vote of the company, in pursuance of the charter or of law, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer and clerk and by a majority of the directors, and they shall, within said ten days, lodge the same to be recorded in the book kept as aforesaid in the office of the town clerk of the town wherein the manufactory shall be established. In case of increase of the capital stock of said companies, like proceedings shall be had as to the amount added and paid in.

Notes not to be considered payment. § 7, post.

[See *Leighton v. Campbell*, 17 R. I. 51; s. c., 20 Atl. Rep. 14.]

§ 3. If any of said officers shall refuse or neglect to perform the duties required of them as aforesaid, they shall be jointly and severally liable for all debts of the company contracted after the expiration of said ten days and before such certificate shall be recorded as aforesaid.

[The words "debts contracted" do not include torts of the corporation, nor judgment against the corporation founded on such torts. *Leighton v. Campbell*, 17 R. I. 51; s. c., 20 Atl. Rep. 14.]

§ 4. Every such company may, by a vote at any meeting called for that purpose, reduce its capital stock within the limits authorized by its charter, and in such case a certified copy of the vote shall, within ten days after the passage thereof, be recorded as aforesaid; and in default thereof, the directors of the company shall be jointly and severally liable for all debts of the company contracted after said ten days, and before the recording of the copy of the vote as aforesaid.

Increase and decrease of stock. Ch. 176, §§ 7, 8.

[See *Leighton v. Campbell*, 17 R. I. 51; s. c., 20 Atl. Rep. 14.]

§ 5. If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders before payment of all the debts of the company contracted previously to the recording of the copy of the vote reducing the capital stock, as in the

preceding section required, all the stockholders of the company shall be jointly and severally liable for the payment of said last mentioned debts.

§ 6. If the directors of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted so long as they shall respectively continue in office: Provided, That the amount for which they shall all be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend or shall object thereto and shall file their objections in writing with the clerk of the company, they shall be exempted from such liability.

[Directors are liable in equity as trustees for a fraudulent breach of trust. *Hodges v. Screw Co.*, 1 R. I. 312.

The primary party to sue for such breach of trust is the corporation, but if it refuses to sue or is under control of the guilty directors, stockholders may sue in their individual names. *Id.* Directors are not personally responsible for a violation of charter, where such violation resulted from a mistake as to their powers, provided such mistake did not proceed from a want of prudence. *Id.*

New shares distributed are not income and do not belong to life tenant. *Brown v. Larned*, *Petitioners*, 14 R. I. 371.

Stock dividend is not "income, profits or interest." *Parker v. Mason*, 8 R. I. 427.]

§ 7. No note or obligation given by any stockholder, whether secured or pledged or otherwise, shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum so loaned.

§ 8. In case any manufacturing company owning a manufacturing establishment has obtained or shall obtain a charter of incorporation, and all the members of the corporation shall be members of the company, or the members of the corporation not members of the company shall own less than one-third of the stock of the corporation, the manufacturing establishment, including the real estate and machinery conveyed by the company to the corporation, shall be appraised by the assessors of taxes of the towns wherein such manufactory shall be situated, and the amount of the capital stock of such corporation represented by such real estate and machinery shall not exceed the sum at which the same may be appraised as aforesaid, either in the whole under the provisions of this chapter, or in any part which may be exchanged by any member of the

Manufacturing company; criminal certificate; debts — G. L., tit. 17, ch. 180, §§ 9-16.

company for shares in the stock of such corporation, or in which he may pay assessments laid on his shares in the same.

§ 9. Such assessors shall receive for their services in appraising such real estate and machinery the sum of ten dollars, to be equally divided between such of them as may act in the premises, not being less than a majority of the whole number, together with their necessary expenses in making such appraisement, to be paid by the corporation.

§ 10. A certificate of such appraisement, signed and sworn to by the assessors making the same, shall be first recorded as aforesaid, in addition to the certificate required by section two of this chapter, before the liability of the members of such corporation for the debts and contracts of the same shall cease.

§ 11. Every manufacturing company included within the provisions of this chapter shall file in the office of the town clerk of the town where the manufactory is established, and every manufacturing corporation, included within the provisions of this chapter, which has no manufactory established in any town in this State, shall file in the office of the town clerk of the town in this State where an office of the corporation is located, annually, on or before the fifteenth day of February, a certificate signed by a majority of the directors, truly stating the amount of its capital stock actually paid in, the value as last assessed for a town tax of its real estate, the value of its personal assets and the amount of its debts or liabilities, on the thirty-first day of December of the year next preceding.

§ 12. If any such companies fail so to do, all the stockholders of such company shall be jointly and severally liable for all the debts of the company then existing and for all that shall be contracted before such notice shall be given, except as hereinafter provided, unless such company shall have become insolvent and assigned its property in trust for the benefit of its creditors, in which case the obligation to give such notice by the filing of such certificate shall cease.

[Filing certificate, under section 11, which is not in fact true, does not relieve the stockholders from liability. *Congdon v. Winsor*, 17 R. I. 236; s. c., 21 Atl. Rep. 540.]

The corporation is not a necessary party to an action of debt against the stockholders brought under above section. *Bank v. Angell*, 18 R. I. 1; s. c., 29 Atl. Rep. 500.]

§ 13. The liability of members of an incorporated manufacturing company provided by sections one and twelve of this chapter, and of the members of such corporations under other statutory provisions, for the debts of such company hereafter contracted or for obligations hereafter incurred, shall be and hereby is limited to the shares of such members in such corporation paid up

to the par value thereof; and if the corporation shall fail to file the certificate provided to be filed under the provisions of section eleven of this chapter, such members shall be liable for said debts and obligations in an additional amount up to but not exceeding the said par value of their said shares.

[See *Bank v. Angell*, 18 R. I. 1; s. c., 29 Atl. Rep. 500.]

§ 14. If such certificate be not so made and filed by a majority of the directors or other officers of such company, any stockholder thereof may exempt himself from liability for the debts of the company in consequence of such neglect, by filing in the office of the town clerk of the town where the manufactory or corporation is established, or, in case such company has no manufactory established in any town in this State, then in the office of the town clerk of the town in this State where an office of the corporation is located, on or before the twenty-fifth day of the same February, a true return, under oath, of the situation of the said corporation, as required by the provisions of this chapter, as nearly as he can ascertain the same, or by filing in the said office a statement, under oath, that a majority of the directors or other officers of such company have been requested by him to make the return required, and that they have refused or neglected so to do, and that the stockholder is not able to make the required return; such statement so made by a stockholder and filed as aforesaid shall be published in some daily newspaper published in Providence, and, if said corporation is located without the county of Providence, in a newspaper in the county where the corporation is located.

§ 15. The whole amount of the debts which any such corporation shall at any time owe shall not exceed the amount of its capital stock actually paid in; and in case of any excess, the directors under whose administration it shall happen shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted as long as they shall respectively continue in office, and until the debts shall be reduced to the amount of the capital stock of such company paid in.

[The words "debts contracted" do not include torts of the corporation, nor judgment against it founded on such torts. *Leighton v. Campbell*, 17 R. I. 51; s. c., 20 Atl. Rep. 14.]

§ 16. Any director who shall be absent at the time of contracting any debt contrary to the foregoing provisions, or who shall object thereto, may exempt himself from said liability by forthwith giving notice of the fact to the stockholders at a meeting which he may call for that purpose.

Reincorporation; liability for debts, etc.—G. L., tit. 17, ch. 180, §§ 17–24.

§ 17. If any manufacturing company heretofore incorporated, having a capital paid in of thirty thousand dollars or upwards, shall, at any legal meeting called for that purpose, vote to adopt the provisions contained in this chapter, and shall also cause to be recorded, as provided in section two of this chapter, a certificate, signed by the president, treasurer, clerk and a majority of the directors, stating the amount of the capital actually paid in, and, if any part thereof has been divided or withdrawn, stating also the amount of the debts and credits and an estimate of the value of the real and personal estate of said corporation, for the purpose of carrying on the business thereof at the time of making such certificate; and if the said officers shall make oath that they have carefully examined the records and accounts of said corporation, and faithfully estimated the value of the property and the funds thereof, and that said certificate by them signed is true, according to their best knowledge and belief; then no stockholder shall be liable for any of the debts of the said company contracted after the recording of such certificate, except for the causes and in the manner hereinbefore provided.

§ 18. If by the terms of any act incorporating a manufacturing company, directors, managers, or the like, are not required to be chosen and none are chosen under and by virtue of the by-laws of the corporation, the certificates required by sections two, eleven and seventeen of this chapter, signed and sworn to by the officers required to be chosen by the charter or by-laws, shall have the same effect as if signed and sworn to by the officer or officers and a majority of the directors required by said sections two, eleven and seventeen.

§ 19. The real and personal estate of every manufacturing corporation incorporated under, or which shall vote to adopt the provisions of this chapter, shall be liable to be attached and taken, levied on and sold for the debts and liabilities of the company on any writ of attachment or execution issued against the company for such debt or liability, the writ to be a writ of attachment in common form, and the courts issuing executions against such corporations shall conform their executions so as to carry out the provisions of this section.

§ 20. If any certificate made or any public notice given by the officers of any manufacturing company, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were stockholders or officers thereof.

[Filing a false certificate does not relieve stockholders from liability. *Congdon v. Winsor*, 17 R. I. 236; s. c., 21 Atl. Rep. 540.]

§ 21. Whenever any of the officers of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company or any part thereof, any person to whom they may be so liable may have an action of the case against any one or more of the said officers, and the declaration in such action shall state the claim against the company and the ground on which the plaintiff expects to charge the defendant personally, and such action may be brought, notwithstanding the pendency of an action against the company for the recovery of the same claim or demand, and both of the actions may be prosecuted until the plaintiff shall obtain the payment of his debt and the costs of both actions.

§ 22. All proceedings to enforce the liability of a stockholder for the debts of a corporation shall be either by suit in equity, conducted according to the practice and course of equity, or by an action of debt upon the judgment obtained against such corporation, and in any such suit or action such stockholder may contest the validity of the claim upon which the judgment against such corporation was obtained, upon any ground upon which such corporation could have contested the same in the action in which such judgment was recovered.

[Stockholders are liable to arrest on execution against the corporation. *Penniman, Petitioner*, 11 R. I. 333.]

A corporation is not a necessary party to an action of debt against the stockholders brought under above section. *Bank v. Angell*, 18 R. I. 1; s. c., 20 Atl. Rep. 500.

All persons who were stockholders when the debts were contracted, and also all persons who were stockholders when the liability for the debt was enforced, could be made to contribute. *Sayles v. Bates*, 15 R. I. 342; s. c., 5 Atl. Rep. 497.

Trustees holding stock in trust are liable to contribute from the trust funds in their hands. *Id.*

§ 23. Any stockholder who shall, whether voluntarily or by compulsion, pay any debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action of the case against the company, in which action the property of the company only shall be liable to be taken and not the person or property of any stockholder of the company; or the person who shall have so paid such debt of the company may proceed in the appellate division of the supreme court in equity, for contribution, against any one or more of the stockholders who were originally liable with him for the payment of said debt, and may recover against each of them their just and equitable proportion thereof.

[Actions against stockholders for debts of a corporation involve complex contributions among the stockholders and are the proper subject of equitable jurisdiction. *Atwood v. Bank*, 1 R. I. 376.]

§ 24. Any officer of a manufacturing company who shall pay any debt of the company, for which he is made liable by the provisions

Actions; service, etc.—G. L., tit. 17, ch. 180, §§ 25-27; tit. 26, ch. 233, §§ 3-5; tit. 27, § 2.

of this chapter, may recover the amount so paid in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken and not the person or property of the stockholder.

§ 25. No person shall hereafter be imprisoned or be continued in prison, nor shall the property of any such person be attached, upon an execution issued upon a judgment obtained against a corporation of which such person is or was a stockholder.

[Stockholders are liable to arrest on execution against the corporation. Penniman, Petitioner, 11 R. I. 333.]

§ 26. No person holding stock in any manufacturing company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject, by virtue of such stock, to any liabilities as a stockholder of such company, but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian and trustee shall be liable in his hands in like manner and to the same extent as the deceased testator or intestate or the ward or person interested in such trust fund would have been, if they had respectively been living and competent to act and had held the same stock in their own names.

See § 23, note.

§ 27. All manufacturing corporations hereafter created shall be subject to the provisions of this chapter.

TITLE XXII. OF REAL AND PERSONAL ESTATES.

CHAPTER CCVI.

Of Liens.

Sec. 14. Petition against a corporation, where filed.

§ 14. In case a petition shall be filed against any corporation, it shall be filed in the county in which an action against such corporation is required to be commenced.

TITLE XXVI. OF ACTIONS, OF PLEADING AND PRACTICE, AND OF PROCEDURE IN COURTS.

CHAPTER CCXXXIII.

Of Civil Actions.

Sec. 3. Venue of actions and suits.

4. Same.

5. Suits to be abated, if brought otherwise.

§ 3. Personal or transitory actions and suits brought by or against corporations

shall, if brought in either division of the supreme court, be brought either in the county, and shall, if brought in a district court, be brought either in the district, in which the other party or some one of the other parties dwells, or in the county or district, respectively, in which the defendant or some one of the parties defendant shall be found, or in which the corporation is located by its charter, or, if not located by its charter, in which the annual meetings of the corporation are required to be, or, if not required to be, are actually held: Provided, That suits and proceedings in equity, and other matters within the jurisdiction of the appellate division, arising in Kent and Bristol counties, shall be brought in said division in Providence.

See ch. 177, § 1, subd. 4, cross-references.

§ 4. If no one of the parties plaintiff or defendant dwell within the State, and the corporation be established out of the State, such personal or transitory action or suit by or against it may be brought in any county or district, respectively.

§ 5. All actions and suits brought contrary to the provisions of the preceding four sections, shall be abated.

TITLE XXVII. OF WRITS AND EXECUTIONS, AND OF THE SERVICE THEREOF.

Ch. 253. Of the service of writs.

254. Certain provisions concerning attachments.

257. Of the service of executions.

CHAPTER CCLIII.

Of the Service of Writs.

Sec. 2. Writ of summons, how served; in tenement cases may be served by posting; on foreign corporation, how served.

20. Service of writ of attachment of shares in corporations, or of personal property in hands of trustee.

33. Lien on shares in corporation, not affected by attachment.

36. Foreign corporations to appoint resident attorney by written power.

37. Same.

38. Authenticated copy of power to be filed with secretary of State; and certified copies to be received in evidence.

39. Attorney to be maintained by appointment from time to time.

40. Service on attorney binds the principal.

41. Penalty for acting as agent or officer of such corporation, if attorney is not appointed.

42. Foreign insurance companies excepted from sections 36 to 41.

§ 2. A writ of summons shall be served by reading the same to the person to be summoned, or by leaving an attested copy thereof with him or with some person living at his last and usual place of abode; or if such writ be issued against any company incorporated in this State, by leaving an attested copy of such writ, if a bank, with the cashier thereof; if an insurance

Service of writs; attachments — G. L. tit. 27, ch. 253, §§ 20, 33, 36-42; ch. 254, § 9.

company, with the president or secretary thereof; and if any other corporation, with the treasurer thereof or the person executing the duties of the treasurer thereof; or in such other mode as the charter of such corporation may prescribe: Provided, That in actions for recovery of tenements let or held at will or by sufferance, service of a writ of summons may be made by personal service as above prescribed or by posting an attested copy thereof on the main door of the premises. And when a writ of summons shall be issued against a foreign corporation doing business in this State, it shall be served by leaving an attested copy thereof with any clerk or agent in this State of such corporation, or with the attorney of such corporation appointed under the law upon whom service may be made as against such corporation.

See ch. 177, § 1, subd. 4, cross-references.

§ 20. Whenever a writ shall command the attachment of the shares of the defendant in any corporation, or of his personal estate in the hands of any person, copartnership or corporation, as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and time of day of such service, with the person or some member of the copartnership named in such writ as trustee; or if such trustee, or the corporation whose shares shall be directed to be attached, shall be a bank, with the cashier thereof; if an insurance company, with the president or secretary thereof; and if any other corporation, it shall be served by leaving an attested copy thereof at the manufactory where the person is employed whose wages are to be trusted, or at the usual place where the payment of said wages is made, upon the treasurer thereof, or the person executing the duties of treasurer thereof, or the agent or superintendent thereof, or at the office of such corporation with some person there employed; and such officer shall also leave an attested copy of such writ, so endorsed, with the defendant or with some person living at his last and usual place of abode, or if he have none within the precinct of such officer, the latter shall send such copy to the defendant by mail, if his address is known to or can be ascertained by such officer.

[In Rhode Island, equitable or executory right to or interest in corporate stock is not attachable. *Lippitt v. Paper Co.*, 15 R. I. 141; s. c., 23 Atl. Rep. 111.]

§ 33. Nothing herein contained shall be so construed as to destroy or impair any lien or claim of any person or body corporate upon any stock or shares attached under the provisions of this chapter.

§ 36. No corporation, unless incorporated by the general assembly of this State, or under general law of this State, excepting national banking associations or other cor-

porations existing under the laws or by the authority of the United States, shall carry on within this State the business for which it was incorporated, unless it shall have complied with the following sections of this chapter.

§ 37. Every such foreign corporation shall appoint by written power some competent person resident in this State as its attorney, with authority to accept service of all process against such corporation in this State, and upon whom all process, including the process of garnishment, against such corporation in this State may be served, and who, in case of garnishment, when the fees therefor shall have been paid or tendered, shall make the affidavit required by law in such cases, and who shall cause an appearance to be entered in like manner as if such corporation had existed and been duly served with process within this State.

§ 38. A copy of such power of attorney, duly certified and authenticated, shall be filed with the secretary of State; and copies thereof, duly certified, shall be received in evidence in all courts of this State.

§ 39. If such attorney shall die or resign or be removed, such corporation shall make a new appointment as aforesaid and file a copy with the said secretary as above prescribed, so that at all times there shall be within this State an attorney authorized to accept service of process and to enter an appearance as aforesaid; and no such power of attorney shall be revoked until after a like power shall have been given to some other competent person resident in this State, and a copy thereof filed as aforesaid.

§ 40. Service of process upon such attorney shall be deemed sufficient service upon his principal.

§ 41. No person shall act within this State, as agent or officer of any such foreign corporation, unless such corporation shall have appointed an attorney as hereinbefore provided, and every person so acting shall be fined one thousand dollars.

§ 42. The preceding six sections shall not be held to apply to foreign insurance companies doing business in this State, but such companies shall continue to be governed by chapter one hundred eighty-two.

CHAPTER CCLIV.

Certain Provisions Concerning Attachments.

Sec. 9. Account to be returned by officer of corporation served with writ attaching defendant's shares.

§ 9. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares, if a bank, the cashier thereof, if an insurance company, the president or secretary thereof, and if any other corporation, the treasurer thereof or person executing the duties of treasurer, shall, if he shall have

been tendered his fee of two dollars and his traveling fee as a witness in either division of the supreme court, and one dollar and like traveling fee in any other court, render an account upon oath to the court to which such writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving of such writ. Such account shall be filed, in any district court, on or before the entry-day of the case, or within the period of six days after such entry day; and in any other court on or before the assignment-day of the case.

See ch. 257.

[The writ was served by foreign attachment on the treasurer of a corporation. The corporation made its garnishee's affidavit by its assistant treasurer. Held, that the affidavit was legal. *Duke v. Locomotive Works*, 11 R. I. 599.]

Refusal or neglect to answer written interrogatories after rendering "the account in writing under oath," is a contempt of court and punishable as such. *Falk v. Flint*, 12 R. I. 14.

Whether the mere equitable title to corporate stock is attachable in Rhode Island, query. *Beckwith v. Burrough*, 13 R. I. 294. Held, not to be in *Lippitt v. Paper Co.*, 15 R. I. 141; s. c., 23 Atl. Rep. 111.

Transfer of corporate stock with intent to hinder, delay and defraud creditors is void. *Beckwith v. Burrough*, 14 R. I. 366.]

CHAPTER CCLVII.

Of the Service of Executions.

- Sec. 19. Levy on defendant's stock or shares in any corporation under attachment.
20. Same subject; sale, how to be made; deed to vest what title and where to be recorded.
21. Levy on defendant's stock or shares in corporation, not under attachment.
22. Levy of execution on final judgment against corporation if returned unsatisfied; scire facias may issue again against general officers or, if none, against any member of the corporation.
23. Same subject; liability of officers and members on scire facias.

§ 19. Whenever any execution shall issue against a defendant whose stock or shares in any banking association or any body corporate established within this State shall have been attached, the officer charged therewith shall serve a copy of the same, if a bank, upon the cashier thereof; if an insurance company, upon the president or secretary thereof; if any other corporate body within this State, upon the treasurer thereof or person executing the duties of treasurer; and if any foreign corporation, upon the clerk or agent thereof, or its attorney authorized to accept service of process in its behalf in this State; which shall be deemed a good and sufficient levy of such execution upon the stock or shares of the defendant in such company.

See ch. 254, § 9, note.

[Equitable right to stock is not attachable. *Lippitt v. Paper Co.*, 14 R. I. 301.]

§ 20. The said stock or shares, or so much thereof as shall be necessary, shall be advertised and sold in the same manner as other personal property levied on by execution, and a deed or deeds thereof given by the officer aforesaid shall vest in the purchaser all the right, title and interest of the defendant in such shares so sold as aforesaid, and shall be recorded by the recording officer of such company.

See ch. 254, § 9, note.

§ 21. The stock or shares of any person whatsoever in any banking association or in any incorporated company within this State, or any foreign corporation having an attorney in this State, appointed by law, upon whom service of process against it can be made according to the provisions of chapter two hundred fifty-three, shall be liable to be levied on by execution duly obtained, like other personal property; and such execution being directed to the proper officer according to law, he may levy the same, in the manner set forth in the preceding two sections, upon any stock or shares of the defendant to be found within his precinct, and shall proceed to advertise and sell and give deeds thereof in the manner therein prescribed.

See ch. 254, § 9, note.

§ 22. Whenever final judgment for any sum shall be rendered by any court against any banking association or any incorporated company, execution on such judgment shall be issued against the goods, chattels and real estate of such corporation; and whenever any such execution shall be, by the officer charged with the service thereof, returned that he cannot find sufficient property of such corporation whereon to levy the same, the party in whose favor such judgment shall have been rendered may sue out of the office of the clerk of the court in which such judgment was rendered a writ of scire facias against the president and directors, trustees, managers, or other like officers of such corporation, if any such there be, and, if none, then against so many of the stockholders or members thereof as he may think fit, returnable to such court on a day certain in such writ to be named.

§ 23. On the return thereof, unless such president and directors, trustees, managers, or other like officers, stockholders or members, shall make it appear that they had not, at the time of service of such writ of scire facias, within their possession and control, sufficient property of such corporation to satisfy such judgment or any part thereof, such court shall issue execution against such president, directors, trustees, managers, or

Insolvency; fraudulent issue of stock — G. L., tit. 29, ch. 274, § 11; tit. 30, ch. 279, § 20.

other like officers, or stockholders or members, for the amount of such judgment, with interest and costs, as for their own private debt, but if it shall appear that such officers, stockholders or members, had property as aforesaid to satisfy part of such judgment only, then an execution as aforesaid shall issue for such amount only and costs.

TITLE XXIX. OF PROCEEDINGS IN SPECIAL CASES.

CHAPTER CCLXXIV.

Of Proceedings in Insolvency.

Sec. 11. To whom this chapter applies.

§ 11. The provisions of this chapter shall apply to petitions by or against corporations chartered by or under the authority of this State, * * * owing debts in this State to the amount of three hundred dollars or over, and they or any of them may be

adjudged an insolvent under this chapter, * * * upon * * * its petition, or upon petition against * * * it or them.

Dissolution, appointment of receiver, etc. Ch. 177, §§ 27-30.

[A foreign corporation is a "resident" of State creating it, and a receiver for it under the Insolvent Law cannot be appointed. *Stafford v. Mills Co.*, 13 R. I. 310.]

TITLE XXX. OF CRIMES AND PUNISHMENTS.

CHAPTER CCLXXIX.

Of Offenses against Private Property.

Sec. 20. Penalty for fraudulent issue of stock.

§ 20. Every president, secretary, cashier, treasurer or other officer or agent of any incorporated company or institution who shall fraudulently issue any stock or certificate of stock of any such company or institution, shall be fined not less than one thousand dollars and shall be imprisoned not exceeding ten years, nor less than one year.

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SOUTH CAROLINA.

CONSTITUTION OF SOUTH CAROLINA—1895.

PROVISIONS RELATING TO CORPORATIONS.

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Declaration of Rights.

- Sec. 6. Taxation.
8. Laws impairing obligation of contracts, prohibited.
17. Private property not to be taken without just compensation.

ARTICLE III.

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- Sec. 31. State lands not to be donated to corporations.
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35. Lands held by alien corporations.

ARTICLE IX.

Corporations.

- Sec. 1. Corporation defined.
2. Charter.
3. Common carrier defined.
4. Local agent.
5. Discrimination.
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18. Liability of stockholders.
19. Controlling interest in another corporation.
20. Right of way.
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Finance and Taxation.

- Sec. 5. Rule for listing shares of stock in corporations.
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ARTICLE I.

Declaration of Rights.

§ 6. All property subject to taxation shall be taxed in proportion to its value.

See art. X, § 5. Subject of taxation. § 217.
Corporation owning no property in State. § 249.

§ 8. No * * * law impairing the obligation of contracts, * * * shall be passed, * * *

Special laws prohibited. Art. III, § 34. Forfeiture of franchise. Art. IX, § 17. Charter subject to amendment. § 1499. Special laws for foreign corporation operating railroad prohibited. Art. IX, § 8.

[Has a corporation the rights guaranteed by the Constitution to natural persons. *R. R. Co. v. Gibbes*, 27 S. C. 386; s. c., 4 S. E. Rep. 49.]

§ 17. * * * Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

See art. IX, § 20, and cross-references.

ARTICLE III.

Legislative Department.

§ 31. Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the general assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across the State lands, nor to interfere with the discretion of the general assembly in con-

firming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

Right of way. Art. IX, § 20. Credit of State not to be loaned to corporation. Art. X, § 6.

§ 34. The general assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to-wit:

IV. To incorporate educational, religious, charitable, social, manufacturing or banking institutions not under the control of the State, or amend or extend the charters thereof.

Laws impairing obligation of contracts prohibited. Art. I, § 8, note, and cross-references. Charter. Art. IX, § 2. Special charter must not be granted. Art. IX, § 9.

§ 35. It shall be the duty of the general assembly to enact laws limiting the number of acres of land which any alien or any corporation controlled by aliens may own within this State.

Foreign corporation, right to own property. § 1471; see § 1504, subd. 4.

ARTICLE IX.

Corporations.

§ 1. The term corporation as used in this article includes all associations and joint-stock companies having powers and privileges not possessed by individuals or partnerships, and excludes municipal corporations.

"Person" and "party" include corporations. § 221.

[Distinction between public and private corporations discussed. *White v. City Council*, 2 Hill, 571. Corporation defined and its status indicated. *McCandless v. R. R. Co.*, 38 S. C. 104; s. c., 16 S. E. Rep. 429.]

§ 2. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporations as may be under the control of the State, or may be provided for in this Constitution, but the general assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: Provided, That the general assembly may by a two-thirds vote of each house on a concurrent resolution allow a bill for a special charter to be introduced,

and when so introduced may pass the same as other bills.

See art. I, § 8, and cross-references.

[A charter is not beyond legislative control, unless clearly so declared. *R. R. Co. v. Gibbs*, 24 S. C. 60. And where a corporation claims that its rights are violated by a statute, it must show a charter ante-dating statutes. *Id.*]

§ 3. All railroad, express, canal and other corporations engaged in transportation for hire and all telegraph and other corporations engaged in the business of transmitting intelligence for hire are common carriers in their respective lines of business, and are subject to liability and taxation as such. It shall be unlawful for any such corporation to make any contract relieving it of its common law liability or limiting the same, in reference to the carriage of passengers.

[A charter to construct railroads does not necessarily imply that steam power should be the agent employed in propelling the cars upon it. *Company*, liable how. *State v. Tupper, Dudley*, 135.]

§ 4. Every corporation organized or doing business in this State, other than religious, educational or benevolent associations, shall have and maintain at least one agent in this State upon whom process may be served, and at least one public office for the transaction of its business: Provided, This section shall not apply to mercantile corporations: Provided, That nothing contained in this section shall be construed to prohibit the general assembly from providing for the service of process on any agent of a corporation so as to bind such corporation.

Principal place of business to be established. § 1466. Summons, how served. § 155. How served in courts of trial justices. § 88.

§ 5. No discrimination in charges on facilities for transportation of the same classes of freight or passengers, or for the transmission of intelligence within this State, or coming from or going to any other State, shall be made by any railroad or other transportation or transmission company between places or persons.

Persons and property transported by any railroad or any other transportation or transmission company or corporation, shall be delivered at any station, landing or port at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station, landing or port. Excursion and commutation tickets may be issued at special rates. This section shall not prevent the railroad commission from making such competitive rates as shall, in their judgment, be just and equitable between the railroads and the public, at all junctional and competitive points or at points where water competition controls the

traffic or at points where the competition of points located in other States may make necessary the prescribing of different rates for the protection of the commerce of this State.

Discrimination shall be prevented. Art. IX, § 13.

§ 6. Any railroad or other transportation corporation, and any telegraph or other transmitting corporation, organized under the laws of this State, shall have the right to connect its roads or lines, at the State line, with those in other States, and shall have the right to intersect with or across any other railroad, street railway, transportation road or transmitting line, and shall each receive and transport the freight, passengers, cars (loaded or empty) and messages delivered to it by another without delay or discrimination.

§ 7. No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.

§ 8. The general assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein. Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under an existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate

and manage the same and the business thereof under said domestic charter.

See art. I, § 8, and cross-references. Privileges granted to foreign corporation. § 1465. Mining corporation may operate railroad. See § 18, at p. 22.

§ 9. The general assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws, with such privileges, powers and limitations, not inconsistent with this Constitution, as it may deem proper. The general assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

See art. III, § 34, and cross-references.

[Bank, though owned entirely by the State, is a mere corporation, possessing same powers and privileges as other corporations. *Bank v. Gibbs*, 3 McC. 377.

Right of public to participate in an incorporated bank depends entirely upon its charter. *State v. Bank, Dudley*, 187.

After bank has suspended specie payments, its charter is forfeited; what held to be a waiver by the State of previous forfeiture. *State v. Bank*, 2 McM. 439.]

§ 10. Stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock or indebtedness shall be void.

See § 1511, and cross-references. Subscriptions to stock, how payable. See § 3, at p. 17.

§ 11. The general assembly shall provide by law for the election of directors, trustees or managers of all corporations so that each stockholder shall be allowed to cast, in person or by proxy, as many votes as the number of shares he owns multiplied by the number of directors, trustees or managers to be elected, the same to be cast for any one candidate or to be distributed among two or more candidates.

See § 4, at p. 17. Meeting of stockholders shall be held annually. See § 16, at p. 21. Failure to elect directors. See § 22, at p. 22.

§ 12. Corporations shall not engage in any business except that specifically authorized by their charters or necessarily incident thereto.

See general powers of corporation. § 1504. Capital stock shall not be used in banking. § 1500.

§ 13. The general assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discrimina-

tions and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

Discrimination prohibited. Art. IX, § 5; id., § 19.

§ 14. A commission is hereby established to be known as "the railroad commission," which shall be composed of not less than three members, whose powers over all transporting and transmitting corporations, and duties, manner of election and term of office shall be regulated by law; and until otherwise provided by law the said commissioners shall have the same powers and jurisdiction, perform the same duties and receive the same compensation as now conferred, prescribed and allowed by law to the existing railroad commissioners: Provided, That the members thereof shall be elected at the expiration of the terms of the present railroad commissioners, who are hereby continued in office for the terms for which they were elected.

§ 15. Every employe of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporation or its employes as are allowed by law to other persons not employes, when the injury results from the negligence of a superior agent or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employe injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them. When death ensues from any injury to employes, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, expressed or implied, made by any employe to waive the benefit of this section shall be null and void; and this section shall not be construed to deprive any employe of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The general assembly may extend the remedies herein provided for to any other class of employes.

§ 16. All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the

adoption of this Constitution shall be subject to the provisions of this article.

Charter subject to amendment. § 1499.

§ 17. The general assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to hold its charter and franchises under the provisions of this article.

See art. I, § 8, and cross-references. Power to have succession by corporate name. § 1504.

[A franchise will not be declared forfeited on motion made in an action for that purpose. *State v. Spartanburg, C. & G. R. Co.*, 28 S. E. Rep. 145.

Failure of railroad company to complete road within time provided by its charter, held, not ipso facto to dissolve the corporation. *Id.*]

§ 18. The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them: Provided, That stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.

Corporation shall have lien upon stock. See § 15, at p. 21. Liability of stockholders. § 1500.

[A judgment against the corporation does not prevent stockholders, when subsequently sued to enforce their personal liability, from imposing a defense to the original debt. *Bank v. Wandow Co.*, 17 S. C. 339.

Personal liability of stockholders is a creature of statute, dependent upon the terms of such statute in each particular case. *Hall v. Klinek*, 25 S. C. 348. An officer, if a creditor, may proceed against a stockholder, and so may a costockholder. *Id.*

Creditors of corporation can compel corporators to increase capital to amount specified in charter to satisfy their demands. *Hazlett v. Wotherpoon*, 2 Rich. Eq. 395. Where assets of corporation are insufficient to satisfy all creditors, individual corporators liable, how far. *Same v. Same*, 1 Strode, Eq. 209. When stockholder not liable to creditor for interest. *Bank v. Blake*, 3 Rich. Eq. 234.

Solvent stockholder not bound to make up for benefit of creditor, deficiency of defaulting and insolvent subscribers. *Mfg. Co. v. Bank*, 6 Rich. Eq. 227.

Solvent corporators bound to indemnify a surety upon an injunction bond given by the corporation. *Farrow v. Bivings*, 13 Rich. Eq. 25. Corporators liable as partners, when. *Id.*

Action by single creditor of insolvent corporation to enforce stockholders' liability must be brought on behalf of himself, and all others who

Corporation; taxation — Const., Art. ix, §§ 19, 20; Art. x, §§ 5, 6.

contributed to expenses, etc. *Terry v. Caham*, 4 S. C. 508.

Requirements of creditors of insolvent corporations in presenting and establishing their claims. *State v. R. R. Co.*, 8 S. C. 129.

What sufficient to make party a stockholder, and what competent evidence to go to jury for that purpose. *R. R. Co. v. White*, 10 S. C. 155.]

§ 19. Nothing prohibited in this article shall be permitted to be done by any corporation or company, persons or person, either for its or their own benefit or otherwise, by its or their holding or controlling in its or their own name or otherwise, or in the name of any other person or persons, or other corporation or company whatsoever, a majority of the capital stock, or of bonds having voting power, of any railroad transportation company, or corporation created by or existing under the laws of this State, or doing business within this State.

Combinations prohibited. Art. IX, § 13.

[Where one corporation owns majority of stock in another, they are still distinct corporations. *Ex parte Fisher*, 20 S. C. 180.]

§ 20. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corporation, which corporation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

See art. I, § 17. State lands not to be donated. Art. III, § 31.

§ 21. The general assembly shall enforce the provisions of this article by appropriate legislation.

ARTICLE X.

Finance and Taxation.

§ 5. * * * All shares of the stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village where such bank is located, and not elsewhere: Provided, That the words "true value in money" as used in line 12 [line 12 of original MS. and line 6 of the printing.—Editor] of this section shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: Provided, a like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. * * *

See art. I, § 6. Shares exempt. § 222. By whom to be listed. § 225; see §§ 248-252. Amount of tax fixed by charter. § 251.

§ 6. The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or stockholder in any company, association or corporation. * * *

State lands not to be donated to corporation. Art. III, § 31.

THE REVISED STATUTES OF SOUTH CAROLINA — 1893.

PART I. Of the Internal Administration of the Government.

TITLE III. OF THE ASSESSMENT AND COLLECTION OF TAXES.

CHAPTER XIV.

The Assessment of Taxes.

- Art. 1. Subjects of taxation.
2. Definition of terms.
3. Property exempt from taxation.
4. General rule as to the return and assessment of property.
6. Special rules as to returns and assessment of corporation.

ARTICLE I.

Subjects of Taxes.

Sec. 217. What property is taxable.

§ 217. All real and personal property in this State, and personal property of residents of this State which may be kept or used temporarily out of the State, with the intention of bringing the same into the State, or which has been sent out of the State for sale and not yet sold; all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, of parties resident in this State shall be subject to taxation.

See Const., art. I, § 6, and cross-references. Corporation owning no property in State not subject to taxation. § 249. Investments in stocks and bonds defined, § 221.

[Personal property taxable where found. *Jenkins v. Charleston*, 5 S. C. 400; see, also, *State v. Charleston*, 1 Mill. 36; *Rulow v. City Council*, 1 N. & McC. 527; *Hayne v. De Liesseline*, 3 McC. 374.]

ARTICLE II.

Definition of Terms.

Sec. 221. Meaning of certain terms and words.

§ 221. * * * The phrase "investment in bonds," as used in this title, shall be held to mean all investments of money or means in bonds, of whatsoever kind * * * issued by * * * any corporation or company of this or any other State or country. The phrase "investments in stocks," as used in this title, shall be held to mean and include * * * shares of the capital of any corporation, company or association, and every

interest in any such shares or portion thereof; * * * The words "person" and "party," and other word or words importing the singular number, as used in this title, shall be held to include firms, companies, associations and corporations; * * *

Corporation defined. Const., art. IX, § 1; see § 217.

ARTICLE III.

Property Exempt from Taxation.

Sec. 222. Shares of stock exempt from taxation, when.

§ 222. The following property shall be exempt from taxation, to-wit:

19. All shares of the capital stock of any company or corporation which is required to list its capital and property for taxation in this State.

Rule for listing. Const., art. X, § 5.

ARTICLE IV.

General Rules as to Returns and Assessments of Corporations.

Sec. 224. Every person to make annual returns of personal property.

225. What persons to make return for corporation.

§ 224. Every person of full age and of sound mind shall annually list for taxation the following property, to-wit:

4. All the moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, owned or controlled by him, whether in or out of this State.

See § 250.

§ 225. The property of every * * * company, body politic or corporate, (shall be listed) by the president or principal accounting officer. * * *

See § 250.

ARTICLE VI.

Special Rules as to Returns and Assessment of Corporations.

Sec. 248. Domestic corporations owning property in this State and elsewhere; how assessed and taxed.

249. Capital of domestic corporation owning no property in State not to be taxed.

Taxation; foreign corporations — R. S., §§ 248-252, 1465, 1466.

Sec. 250. Corporations in general to list property as individuals are required to list.

251. Companies incorporated under joint charter to be assessed and taxed as may be prescribed therein.

252. Refusal to pay taxes works forfeiture of charter.

§ 248. Any company or corporation organized under the laws of this State and owning property in any other State or country as well as in this State shall not be required to return its capital for taxation in this State, but shall return such property as it owns in this State, and such proportion of the value of its other property as would be taxable in this State if owned by the individual residents thereof; and if such return be made by such company, the shareholders therein shall not be required to return their shares for taxation.

Shares of corporation located in this State. Const., art. X, § 5.

§ 249. A corporation organized under the laws of the State but owning no property therein shall not be required to return its capital for taxation in this State.

What property taxable. § 217.

§ 250. All companies and corporations, whether organized under the laws of this State or not, the manner of listing whose personal property is not otherwise specifically provided for by law, shall list for taxation all their personal and real property and effects at the same time, in the same manner, and in the same localities, as individuals are required to list similar property and effects for taxation.

See § 224.

§ 251. Any company incorporated under a joint charter granted by this and some other State or States, and the manner of taxing which, or the amount upon which it shall be taxed, or the specific proportion of its capital or property upon which taxes shall be assessed in South Carolina, is prescribed or fixed in its charter, shall be assessed for taxation and taxed as prescribed in such charter until otherwise legally provided.

See Const., art. X, § 5.

§ 252. Whenever any corporation chartered under the laws of this State shall, within thirty days after the time required and permitted by law for taxes to be paid, with or without penalty, as now required by law, refuse, neglect or omit to pay the taxes for State and county purposes, as assessed and levied upon the property of such corporation, the charter of such corporation, with all the rights, privileges and franchises thereunder, shall become and be deemed forfeited, and

the corporate existence of such corporation shall be annulled. In every such case it shall be the duty of the attorney-general, and he is hereby required, to bring an action against such corporation for the purpose of vacating and annulling the act incorporating such corporation and all acts amendatory or in renewal thereof, in the manner prescribed by title 13, chapter 2, of the Code of Civil Procedure of this State.

Action by attorney-general to annul charter. § 426.

TITLE XII. OF CORPORATIONS.

Ch. 45. Foreign corporations, generally.

48. Provisions applicable to corporations generally.

49. Corporations organized under general laws.

CHAPTER XLV.

Foreign Corporations, Generally.

Sec. 1465. Rights and privileges granted to.

1466. Prerequisites to doing business in this State.

1467. Copy of charter and by-laws to be filed with secretary of State, etc.

1468. Copies to be furnished and received in evidence.

1469. Penalties.

1470. Administration of assets of.

1471. Subject to laws of the State; limitations.

§ 1465. Foreign corporations duly incorporated under the laws of any State of the United States, or of any foreign country in treaty and amity with the said United States, are hereby permitted to locate and carry on business within the State of South Carolina in like manner as the natural born citizens of the States of the United States, or of such foreign country, might do under the law existing at the time, subject, nevertheless, to the terms and conditions in this chapter hereafter set forth.

Foreign corporation shall not be licensed to operate railroad. Const., art. IX, § 8. Powers of corporation. § 1504; see Act of 1897, prescribing further conditions upon foreign corporations, at p. 28.

[A corporation chartered by the laws of one State may lawfully do business in another unless forbidden by laws of such State. *Kerchner v. Gettys*, 18 S. C. 521. And a corporation chartered by laws of North Carolina may do business in this State and may select for its officers citizens of this State. *Id.*]

Act of March 9, 1896, providing for domestication of foreign railroad corporations, does not require payment of a charter fee, graded according to the amount of the capital stock of the charter. *State v. Tompkins*, 25 S. E. Rep. 982.

Act of March 9, 1896, providing that a foreign railroad corporation, by filing a copy of its charter, shall become a domestic corporation, is not unconstitutional. *Id.*]

§ 1466. That any and every such foreign corporation owning property or doing business in this State on the 1st day

of July, 1894, shall within sixty days after the 1st day of July, 1894, and any and every such foreign corporation which shall acquire property or commence to do business in this State after the 1st day of July, 1894, shall within sixty days after so acquiring any property or commencing to do business in this State, file in the secretary of State's office in this State a written stipulation or declaration, in due form, designating some place within this State as the principal place of business or place of location of said corporation in this State at which all legal papers may be served on said corporation by the delivery of the same to any officer, agent or employe of said corporation found thereon; or if none such be found thereon, then by leaving copies of the same on the premises, and that such services shall have like force and effect in all respects as service upon citizens of this State found within the limits of the same.

See Const., art. IX, § 4, and cross-references.

§ 1467. That in addition to the same, said corporations are hereby required to file in the office of the secretary of State, together with the written stipulation or declaration aforesaid, copies of their charter and by-laws, with all amendments of the same that may from time to time be made, within sixty days from the date of making the same. That in addition thereto the said corporations are required to file annually in the office of the secretary of State, on or before the thirty-first day of January, a statement, sworn to by some officer of the corporation, showing the residence and post-office address of such corporation, the amount of capital stock of the same actually paid, and the names of the president and secretary (if there be any such) and the board of directors, with their respective place of residence and post-office addresses.

Report to secretary of State. § 1510. Filing of charter with. See § 5, at p. 18.

§ 1468. That any person applying for the same shall be entitled to copies duly certified of all the foregoing papers required to be filed upon payment of the customary fees, and the same shall be admitted in the courts as competent evidence of all matters appearing thereon.

Certificate of defendant's interest furnished. § 258.

§ 1469. That any such foreign corporation failing to file any of the papers hereinbefore required to be filed shall be liable to an indictment for such failure, and upon conviction thereof shall be fined in not exceeding five hundred dollars, at the discretion of the court, and shall be prohibited from further

carrying on business in this State until such fine is paid and this chapter complied with.

§ 1470. That it shall and may be lawful for any court of competent jurisdiction in this State to take possession of, wind up, administer and marshal the assets in this State of any such foreign corporation (in like manner and in like cases as by law may be done with respect to corporations chartered under the laws of the State) for the protection of any and all citizens of this State who may be stockholders or creditors of such foreign corporations, as in the case of legatees and creditors (citizens of this State) of deceased persons whose domicile was at the time of their decease outside this State in respect to assets within this State.

See §§ 424-441. Receiver may be appointed. § 265.

§ 1471. That all and every such foreign corporation carrying on business or owning property in this State shall be subject to the laws of the same in like manner as corporations chartered under the laws of this State, but nothing herein contained shall be construed to permit any such foreign corporation to exercise any franchise or enjoy any privilege or immunity other than the right to own property and carry on business in like manner as individuals, natural born citizens of such State of the United States or of foreign countries, might do, and subject to the terms and conditions of this chapter.

See Const., art. III, § 35, and art. I, § 8, and cross-references.

[A State may make such regulations as it pleases in regard to foreign corporations. *Central Co. v. Georgia*, 32 S. C. 319; s. c., 11 S. E. Rep. 192.]

CHAPTER XLVIII.

Provisions Applicable to Corporations Generally.

- Sec. 1499. All charters subject to amendment or repeal.
- 1500. Provisions applicable to all corporations except railroads and banks.
 - 1501. Bond of treasurer.
 - 1502. Stockholders' meetings; proxies; quorum.
 - 1503. Certificates of stock.
 - 1504. Powers of private corporations.
 - 1505. Majority forms board in exercise of powers.
 - 1506. To organize, etc., in two years; else powers cease.
 - 1507. Increase of stock or debt.
 - 1508. How increased.
 - 1509. Meeting; notice; what to state, etc.
 - 1510. Report to secretary of State as to increased vote for, etc.; limit.
 - 1511. Restrictions on issue of stock or bonds.
 - 1512. Corporations may recover debts from their members.
 - 1513. Not to issue bills of credit as a circulating medium; penalty; proviso.

§ 1499. It shall be deemed a part of the charter of every corporation created under the provisions of any general law, and of

every charter granted, renewed or amended by act or joint resolution of the general assembly, (unless such act or joint resolution shall, in express terms, declare the contrary,) that such charter, and every amendment and renewal thereof, shall always remain subject to amendment, alteration or repeal by the general assembly.

See Const., art. I, § 8, and cross-references.

[See R. R. Co. v. Gibbs, 21 S. C. 60; Same v. Same, 27 id. 385; s. c., 4 S. E. Rep. 49.]

§ 1500. The following provisions shall constitute a part of the charter of every corporation, other than railroad or banking corporations, already in existence under act of assembly in this State, either general or special, passed since the adoption of the present Constitution,* or which may be at any time hereafter created under or by virtue of any act of assembly, general or special, to-wit:

1. That each stockholder in any such corporation shall be jointly and severally liable to the creditors thereof in an amount, besides the value of his share or shares therein, not exceeding five per cent. of the par value of the share or shares held by such stockholder at the time the demand of the creditor was created: Provided, That such demand shall be payable within one year, and that proceedings to hold such stockholder liable therefor shall be commenced within two years after the debt becomes due, and while he remains a stockholder therein, or within two years after he shall have ceased to be a stockholder: And, further, That persons holding stock in such companies as trustees or executors, administrators, or by way of collateral security, shall not be personally subject to the liabilities of stockholders under the foregoing provisions, but the persons pledging such stock shall be liable as stockholders, and the estates and funds in the hands of such executors or administrators shall be liable in their hands, in like manner and to the same extent as the testator or intestate, or the ward or person interested in said trust estate, would have been if they had respectively been living and competent to act and hold the stock in their own names: And, further, That the liability enforced in this provision shall not apply to any corporation whatever in this State in the charter of which a different liability shall have been or shall be imposed.

2. That unless some other provision for the prevention and punishment of fraudulent representations as to the capital, property and resources of such corporations shall have been inserted therein, in which case the provision in reference thereto shall be only as is specified in such charter, any director or other officer or stockholder, of the

said corporation who shall knowingly and willfully make or cause to be made any fraudulent misrepresentation or misrepresentations as to either the capital, property or resources of the said corporation shall be held guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not more than two thousand dollars or imprisonment for not longer than two years, or both, at the discretion of the court.

3. That such corporation shall have power to purchase and hold such real estate as may be required for their purposes, or such as they may be obliged or may deem for their interests to take in the settlement of any debts due them, and they may dispose of the same; to sue and be sued in all courts; to have and to use a common seal; to elect, in such manner as they may determine to be proper, all necessary officers, and fix their duties; to make by-laws and regulations, consistent with the Constitution and laws of this State, for their own government and the due and orderly conduct of their affairs and the management of their property.

4. That the shares in the capital stock of such corporations shall be deemed personal estate, and the mode of issuing the evidence of stock, and the manner, terms and conditions of assigning and transferring shares, shall be prescribed by the by-laws of each corporation.

5. That no part of the capital stock or any of the funds of such corporation shall, at any time during the continuance of their charter, be used or employed, directly or indirectly, in banking operations, or for any purpose whatsoever inconsistent with the provisions of their respective charters.

Liability of stockholders. Const., art. IX, § 18. Fraudulent misrepresentations. § 195. Business of corporation confined. Const., art. IX, § 12. Power to hold real estate. § 1504, subd. 4.

[Liability of officers personally for debts of a corporation under General Incorporation Act, arises by contract under terms of charter. Sullivan v. Mfg. Co., 20 S. C. 79. Liability of directors under General Incorporation Act arises ex contractu, not ex delicto. Same v. Same, 14 S. C. 494.]

Stockholder can defend the original debt and is not liable therefor, though renewed, after the two years. Bank v. Wando Co., 16 S. C. 339. His liability for the five per cent. is primary. Bird v. Calvert, 22 S. C. 292; Hall v. Klinck, 25 id. 348.]

§ 1501. The treasurer of any corporation in this State shall give bond in such sum and with such sureties as shall be required by the by-laws for the faithful discharge of his duty.

[In action against corporator for dues to the corporation, treasurer's ledger containing only aggregate sums, with oath, admitted in evidence. Columbia v. Harrison, 2 Mill. 213.]

§ 1502. At all meetings of any company absent stockholders may vote by proxy, au-

* Old Constitution.

thorized in writing. Every company may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, the form of such proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

See § 16, at p. 21, and cross-references. Power to make by-laws. § 1504, subd. 6.

[When the original agreement to subscribe between the stockholders or parties is altered by a majority, the minority are not bound to the performance of that original agreement. *Southern, etc., Co. v. Magrath*, McM. Eq. 93.]

§ 1503. The shares in any company shall be numbered, and every stockholder shall have a certificate, under the seal of the corporation, and signed by the treasurer, certifying his property in such shares as are expressed in the certificate.

Not to issue bills of credit. § 1512. Stock must be paid for before issue. See § 17, at p. 21.

[Negotiable notes given for a completed purchase of shares of stock are based upon a sufficient consideration. *Kerchner v. Gettys*, 18 S. C. 521.

Whether a purchaser of shares in a corporation, in an action for the purchase money, can deny its corporate existence, query. *Id.*

Deposit of certificate of stock in an incorporated company, in consideration of liability incurred by depositor, will create lien in equity upon stock to extent of liability, against subsequent purchaser. *Maybin v. Kirby*, 4 Rich. Eq. 105.

What is prima facie evidence that person is a stockholder. *R. R. Co. v. Smith*, 6 Rich. L. 1, 91. Transfer of bank stock by agent held valid. *Bank v. Cox*, 11 Rich. Eq. 344.

Guardian held to be trustee of stock in his hands, belonging to ward, and purchaser charged with notice of facts. *Webb v. Mfg. Co.*, 11 S. C. 396.

A certificate of stock held in trust "for the stockholders" of a corporation, and shown to have been intended for the corporation itself, will be treated as the property of such corporation. *Murray v. Mining Co.*, 37 S. C. 468; s. c., 16 S. E. Rep. 143.

Railroads can be compelled to perform their duties relative to the capital stock of the company, and their control of the transfer thereof by mandamus. *Townsend v. Melver*, 2 S. C. 25.

Provisions of certificate as to transfer solely for security of corporations and purchasers without notice. *Fraser v. Charleston*, 11 S. C. 486. Indorsement in blank and delivery constitute equitable assignment. *Id.*; *Bank v. Cox*, supra.

Delivery of the certificate held not essential to one's being a stockholder. *Glenn v. Rosborough*, 26 S. E. Rep. 611.

Creditor who wrongfully erased his own unpaid subscription from books of company held not entitled to enforce liability of other stockholders on unpaid subscriptions. *Jackson v. Medicine Co.*, 25 S. E. Rep. 51.

Charters making stockholders liable on demand payable within one year does not require suit to be brought within one year after the demand is due. *Sadler v. Nicholson*, 26 S. E. Rep. 893.

A pledgee held not a bona fide purchaser of corporate stock. *H. & B. R. R. & Lumber Co. v. Bank of Charleston Nat. Banking Assn.*, 26 S. E. Rep. 238.

Mismanagement of the affairs of the corporation subsequent to the execution of the notes for stock held not a defense to the notes. *Glen v. Rosborough*, supra.

In an action on a note given for stock, held, that defendant could not show that the statements certified to the secretary of State by the incorporators were false. *Id.*

In an action against the stockholders brought within the period of limitations, laches is not available. *Sadler v. Nicholson*, supra.]

§ 1504. Every private corporation as such has power

1. To have succession, by its corporate name, for the period limited in its charter; and when no period is limited, in perpetuity.

Powers of corporation. See § 17, at p. 21. Failure to organize. § 1506. See Const., art. IX, § 17. Rights of foreign corporation. § 1465.

2. To sue and be sued.

Service of process. Code Civ. Pro., § 88. Actions against moneyed corporations. *Id.*, §§ 129-130. Service of summons. *Id.*, §§ 155-158. Verification of pleadings. *Id.*, § 178. Injunction. *Id.*, § 245. Attachment. *Id.*, §§ 248-258. Receivers may be appointed. *Id.*, § 265. Actions against foreign corporation. *Id.*, § 423. Actions by the attorney-general. *Id.*, §§ 424-441. Lien on stock of stockholder. § 1504, subd. 7. May sue its members. § 1512.

[A corporation may be sued for maintaining a public nuisance. *Steamboat Co. v. R. R. Co.*, 30 S. C. 539. And may sue or be sued for a trespass. *White v. City Council*, 2 Hill, 571; *R. R. Co. v. Parlow*, 14 Rich. 237; *Main v. R. R. Co.*, 12 id. 82.

In decreeing compensation for the loss arising from a trespass court gives compensation only for actual loss or injury. *Sanders v. Anderson*, 10 Rich. Eq. 232.

A corporation can maintain an action in South Carolina in its corporate capacity. *Bank v. Stuenkel*, 1 Hill, 44.

It cannot be attached, but can only be made a party to a suit, by summons and distringas. *Glaize v. R. R. Co.*, 1 Strobb. 70. May be sued by one of its own members. *Waring v. Catawba*, 2 Bay, 109.

But a corporation which has gone out of business cannot be sued. *Jones v. Herald Co.*, 22 S. C. 731.

A general denial does not put in issue plaintiff's corporate capacity to sue. *Palmetto Co. v. Risley*, 25 S. C. 369; *Ober v. Blalock*, 40 id. 31; s. c., 18 S. E. Rep. 264.

When complaint alleges corporate existence in plaintiff, and nothing appears in complaint showing a want of it, or capacity to sue, demurrer not sustainable. *R. R. Co. v. White*, 14 S. C. 51; *R. R. Co. v. Garland*, *Id.* 63.

Not good objection by way of demurrer to allege that declaration does not state plaintiff to be a body politic, if it sues as such. *Bank v. Garrett*, 2 Brev. 148.

Reference to charter in complaint of corporation does not incorporate charter in complaint. *R. R. Co. v. White*, supra; *R. R. Co. v. Garland*, supra. Failure to allege performance of condition precedent to corporate existence, not demurrable. *Id.*

Railroads can be compelled to perform their duties relative to the capital stock of the company, and their control of the transfer thereof, by mandamus. *Townsend v. Melver*, 2 S. C. 25.

What will not constitute valid defense either for corporation or stockholder, when sued on its bills. *Johnson v. Bank*, 3 Strobb. Eq. 263.

Where an association becomes incorporated, and the corporation accepts an assignment of all the property of the association, for purpose of carrying out its object, it is primarily liable for the debts. *Haslett v. Wotherspoon*, 1 Strobb. Eq. 209.

To a bill filed by a stockholder against president and directors, the corporation should have been made a party. *Ins. & Tr. Co. v. Sebring*, 5 Rich. Eq. 342.

In an action by stockholders in behalf of a corporation, an allegation of request made by plaintiffs to the directors to prosecute the action, is not sufficient allegation of request to the board. *Latimer v. R. R. Co.*, 39 S. C. 44; s. c., 17 S. E. Rep. 258.

President of manufacturing corporation has no power merely as president, to give confession of judgment. *Thew v. Manf. Co.*, 5 S. C. 415.

Motion after lapse of four years to set aside judgment by default against a corporation on ground that officers had no authority to contract debt, refused. *Clark v. Manf. Co.*, 8 S. C. 22. Motion to set aside such judgment for irregularities in summons, refused, when. *Id.*

An action does not lie by corporation to set aside judgment by confession against it on ground that confession was not in form valid and binding. *Manf. Co. v. Thew*, 5 S. C. 5.

What allegation in complaint not sufficient to maintain action of fraud against corporation on a judgment by default. *Manf. Co. v. Thew*, 5 S. C. 5.

Judgment against corporation of which B. was agent and stockholder is not conclusive evidence against D. claiming under junior grant to himself, but record may be given in evidence against him on question of location. *State v. Bobo*, 11 Rich. 507.

The president of a railroad company sufficiently represents his corporation to make his admission evidence against company. *R. R. Co. v. Blake*, 12 Rich. 634.

In an action for dues to a corporation, against a corporator, treasurer's ledger containing only aggregate sums admitted in evidence, with oath. *Columbia v. Harrison*, 2 Mill. 213.

What indorsement of note to president of a corporation sufficient to make it property of corporation, and liable to be given in evidence as discount in a suit by drawer against company. *Dunont v. Ferry Co.*, 9 Rich. 255.

Notice to stockholder is not notice to the corporation. *Bank v. Anderson*, 28 S. C. 144; s. c., 5 S. E. Rep. 343.

Mechanic's lien binds property of corporation, although stock has changed hands by a sale under previous hypothecation. *Watson v. Bridge Co.*, 13 S. C. 433.]

3. To use a common seal, and to alter the same at pleasure.

See § 15, at p. 21.

[A wafer held to be a sufficient corporate seal to the deed of a corporation. *St. Philip Church v. Z. P. Church*, 23 S. C. 297.

A corporation can convey only under seal. *State v. Seuft*, 2 Mill. 367. Appointment of agent need not be under seal. *Bank v. Manf. Co.*, 10 Rich. 95.

Proof of signatures of officers to release, purporting to have been executed by the corporation, is prima facie evidence of execution and seal. *Josey v. R. R. Co.*, 12 Rich. 134.

Seal is equally appropriate as a means of evidencing its assent to be bound by a simple contract as by a specialty. *Bank v. R. R. Co.*, 5 S. C. 156.]

4. To hold, purchase, lease, mortgage or otherwise dispose of and convey such real and personal estate as is limited by its char-

ter; and if not so limited, such an amount as the business of the corporation requires.

Land held by alien corporation. Const., art. III, § 35. See § 15, at p. 21. May mortgage property. See § 14, at p. 20.

[Where property is bought by a president with company funds, a trust in such property results to the company. *Palmetto Co. v. Risley*, 25 S. C. 309.

Certificate of stock in land company is not a legal title to land but a mere chose in action. *Blake v. Jones*, Bail. Eq. 141.

Court of equity possesses jurisdiction to give relief where owner has conveyed his property to a corporation for public purposes. *Walker v. City*, Bail. Eq. 443.

A corporation can only convey under seal; but where the conveyance was not under seal, one holding under grantee of corporation cannot take advantage of such defect in title. *State v. Seuft*, 2 Mill. 367.

Where authority was given an officer of a corporation to raise money on a mortgage of its real estate, held, that personal property mortgaged by an officer could not be made liable for debt. *Ravenel v. Lyles*, Sp. Eq. 281.

Who to judge whether particular parcel of land is required for purposes of a railroad company. *R. R. Co. v. Blake*, 9 Rich. Eq. 228.]

5. To appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties and fix their compensation.

[A corporation is bound by its agent's contract, even where by-laws, not published, forbid it. *Walker v. R. R. Co.*, 26 S. C. 81; s. c., 1 S. E. Rep. 536.

A member of a company appointed by the company to collect from the members is their agent, and if he collects and does not pay over to a creditor of the company, it is their loss. *Shubrick v. Fisher*, 2 DeS. 148.

By vote or other act, corporation may appoint agents, whose acts and contracts, within scope of authority, will bind the corporation. *Coleok v. Garvey*, 1 N. & McC. 231.

Such appointment may be implied from acts of the corporation, and need not be under seal. *Bank v. Manf. Co.*, 10 Rich. 95.]

6. To make by-laws, not inconsistent with any existing law, for the transfer of its stock, the management of its property, or the regulation of its affairs.

Number of stockholders to attend meetings determined by by-laws. § 1502. Power to establish by-laws. See § 15, at p. 21. Manner of transfer of stock. See § 17, at p. 21.

[An agreement between two persons constituting a corporation, held not to be its by-laws, but merely a contract. *McKay v. Beard*, 20 S. C. 156.

When uncommunicated by-laws will be evidence against employes and against strangers. *Moyer v. Terminal Co.*, 41 S. C. 301; s. c., 19 S. E. Rep. 651.]

7. To declare and create, by appropriate by-laws, a lien on the stock of any stockholder in such corporation, for such sum as the stockholder is or may be indebted to

· Increase of capital or indebtedness — R. S., §§ 1505-1513.

such corporation for his subscription to stock therein.

Corporation may sue for arrears of members. § 1512. Lien, how enforced. § 15, at p. 21.

§ 1505. When the corporate powers are directed to be exercised by any particular body or number of persons, a majority of such body or persons, unless it is otherwise provided, form a board for the exercise of such powers.

See § 1502, and cross-references.

§ 1506. If any private corporation hereafter created by the general assembly or incorporated under any law does not organize and commence the transaction of its business within two years from the date of its incorporation, its corporate powers shall cease.

Action for vacating charter. Code Civ. Pro., § 426. Non-user of five years. See § 27, at p. 22.

§ 1507. Unless otherwise specially provided in chapter XLIX, neither the capital stock nor bonded indebtedness of any private corporation organized in this State shall be increased, except in the manner hereinafter prescribed.

Restrictions on issue of stock. § 1511. Same. § 14, at p. 20.

§ 1508. Before any such increase shall be authorized the consent of the persons holding the larger amount in value of the stock of such corporation shall be obtained in favor thereof at a meeting of the stockholders of such corporation convened for the purpose of voting upon the proposition.

See § 14, at p. 20, and cross-references.

§ 1509. No meeting of stockholders for the purpose mentioned in the preceding section shall be held until after thirty days' notice thereof has been given by publication in a newspaper of general circulation, published in the county where the corporation has its principal office; and if none is published in the county, then in a newspaper having general circulation published in the county nearest the principal office of such corporation, a copy of which shall be mailed to each stockholder; and such notice shall explicitly state what increase it is proposed to make to the capital stock or bonded indebtedness of the corporation.

See § 14, at p. 20, and cross-references.

§ 1510. If at such meeting the consent of the person holding the larger amount in value of the stock of such corporation shall be obtained to a specified increase of either the capital stock or bonded indebtedness, a report thereof specifying the amount of in-

crease consented to shall be made to the secretary of State, who shall make and keep a record thereof; and it shall be lawful for such corporation to increase its capital stock or bonded indebtedness in conformity with such consent of the stockholders, obtained as aforesaid. Such increase may be less, but shall not be more, than that stated in the published notice for such meeting.

§ 1511. Neither stock nor bonds shall be issued by any private corporation except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

See Const., art. IX, § 10. Increase of stock prohibited. § 1507. Same, limit of. § 14, at p. 20.

§ 1512. All bodies corporate, in any court in this State, may sue for, recover and receive from their respective members all arrears or other debts, dues and demands which now are or hereafter may be owing to them, in the like mode, manner and form as they might sue for, recover and receive the same from any indifferent person who might not be one of their body; any law, usage or custom to the contrary thereof in any wise notwithstanding.

Lien on stock of stockholder. § 1504, subd. 7. Corporation may sue and be sued. § 1504, subd. 2. Lien on stock, how enforced. § 15, at p. 21.

[Action may be maintained against any subscriber, who does not pay his subscription, by any one who may be treasurer when the action is commenced. *Ramsey v. Anderson*, 1 McM. 300. Installments due to company by defaulting stockholders barred by statute after four years, both with reference to company and creditor. *Manf. Co. v. Bank*, 6 Rich. Eq. 27.]

§ 1513. No body politic or corporate within this State shall be allowed to issue any bills of credit in the nature of a circulating medium, or other than such as answer the purpose of contracts, under the penalty of ten dollars for each and every dollar issued; but this clause shall not be so construed as to affect the chartered rights of any banking institution within this State incorporated by an act of the legislature.

Certificates of stock. § 1503.

CHAPTER XLIX.

Corporations Organized Under General Laws.

ARTICLE I. BUSINESS CORPORATIONS.

(This article of the Revised Statutes, §§ 1514-1533, inclusive, is repealed by implication by the following law of March 9, 1896.)

AN ACT to provide for the formation of certain corporations and to define their powers.

- Sec. 1. Certain corporations; how created.
2. Board of corporators commissioned by secretary of State.
3. Subscriptions, how payable.

Business corporations; board of corporators — Act, March 9, 1896.

- Sec. 4. Organizations, how effected.
 5. How certificate of charters secured.
 6. Irregularities not to vitiate corporation unless ordered by proper proceedings.
 7. Board of corporators to turn over to the company.
 8. Proceedings to be recorded by secretary of State.
 9. How capital stock may be increased.
 10. How corporation may secure charter under this act; how capital stock may be increased.
 11. Expenses of charter.
 12. Duration of charters under this act.
 13. Election of directors, etc.
 14. Capital stock, how increased.
 15. Powers of corporations under this act.
 16. Meeting of stockholders.
 17. When stock shall be issued.
 18. Certain powers of corporations chartered under this act.
 19. Who eligible as director, trustee, etc.
 20. Books opened to inspection.
 21. Non-user of charter for five years a forfeiture.
 22. How meetings of stockholders may be called.
 23. Stock personal property.
 24. Quorum.
 25. Fraud by officer or stockholder a misdemeanor.
 26. Shares to be numbered, etc.
 27. Time allowed for organization.
 28. Payments for stock must be bona fide.
 29. Right to charge for use of wharves.
 30. When to take effect.
 31. Corporations subject to liabilities now imposed by law.
 32. Repealing clause.

Be it enacted by the general assembly of the State of South Carolina:

Section 1. (As amended March 5, 1897.) That the charter for any and every corporation except railroad, railway, tramway, turnpike and canal corporations shall be issued by the secretary of State. That two or more persons desiring to form a corporation for any purpose or purposes whatsoever, or two or more combine, (except for municipal purposes,) and except also for railroad, railway, tramway, turnpike, and canal corporations, may file with the secretary of State a written petition signed by themselves setting forth: 1. The names and residences of the petitioners. 2. The name of the proposed corporation. 3. The place at which it proposes to have its principal place of business, if any, or to be located. 4. The general nature of the business, if any, which it proposes to do. 5. The amount of capital stock, if any, and how and when payable. 6. The number of shares into which the capital stock, if any, is to be divided and the par value, if such there be, of each share. 7. Any other matter which it may be desirable to set forth.

Special laws prohibited. Const., art. III, § 34.

[Corporations have legal place of residence wherever corporate business is done. *Cromwell v. Ins. Co.*, 2 Rich. 512.]

They may have a special and constructive residence. *Glazie v. R. R. Co.*, 1 Strobb. 70.]

§ 2. (As amended March 5, 1897.) Upon the filing of the petition as above, and upon the payment of a fee of \$3 for the record-

ing of said petition, the secretary of State shall issue to the parties, or to any two or more of them, a commission constituting them a board of corporators and (where there is to be capital stock) authorizing them to open books of subscription to the capital stock of the proposed corporation after such public notice, not exceeding ten days, as he may require in said commission.

[What requirements not conditions precedent to corporate existence. *R. R. Co. v. White*, 14 S. C. 51; *R. R. Co. v. Garland*, *Id.* 63.]

§ 3. (As amended March 5, 1897.) All subscriptions to the capital stock of any corporation organized under this act shall be payable in money, or in labor, or in property at its money value, and shall be listed, the labor or the property and the value thereof to be specified in the list of subscriptions; but no subscription in labor or in property shall be received unless such labor or property and the value thereof, so to be specified as aforesaid, be approved by said board of corporators; and in case of failure to perform the labor or to deliver the property according to the terms of the subscription, the money value thereof, as specified in the list of subscriptions, shall be paid by the subscribers.

See § 1511, and cross-references.

§ 4. When not less than 50 per cent. of the proposed capital stock shall have been subscribed by bona fide subscribers, the board of corporators shall call the subscribers together. At such meeting of the subscribers, a majority of whom in value being present in person or by proxy, the subscribers shall proceed to the organization of the company by the election from themselves of a board of directors, trustees or managers, of such number as they may deem proper, not to exceed nine in number, which board shall manage the affairs of the corporation until their successors shall have been elected and shall have qualified, according to the constitution and by-laws of the corporation. The board of directors, trustees or managers shall call for the payment of the subscription to the capital either in whole or in such installments as it shall see fit. The board of directors, trustees or managers shall elect from their number a president, and they may also elect such person or persons as they may see fit as secretary and as treasurer, the latter of whom shall give such bond as they may require.

Election of directors shall be provided for by law. Const., art. IX, § 11. Annual meeting of stockholders. See § 16, post. Absent stockholders. § 1502.

[The term "stock," when used in reference to corporations and in connection with the privilege of subscribing thereto, means "capital stock." *State v. R. R. Co.*, 16 S. C. 524.]

Business corporations; subscriptions; charter — Act, March 9, 1896, §§ 5-9.

Preferred stock is capital stock. *Id.*

After a corporation has done corporate acts it is too late for corporators to question its organization. *McKay v. Board*, 20 S. C. 156.

What facts will make one a stockholder without right to withdraw his subscription. *R. R. Co. v. Smith*, 6 Rich. 91.

When title of officers cannot be questioned on ground that a certain class of votes was illegible. *State v. Lehre*, 7 Rich. 234.

Act of majority of trustees upon any matter within their competency is the act of the corporation. *Ex parte Greenville Academies*, 7 Rich. Eg. 471.

The word "subscribed" construed. *R. R. Co. v. White*, 14 S. C. 51.

What is sufficient compliance with requirements of act of incorporation with reference to subscription to corporate stock before operations commenced. *R. R. Co. v. Ezell*, 14 S. C. 281.]

§ 5. (As amended March 5, 1897.) Upon the payment to the treasurer of the corporation, or to some other officer designated for the purpose by the subscribers, of at least 20 per cent. of the aggregate amount of the capital subscribed payable in money, and also upon the delivery to such officer of at least 20 per cent. of the property subscribed to the aggregate amount of the capital stock, or upon its delivery being secured by such obligation of the subscribers as the board of directors, trustees or managers may approve, the board of corporators, or a majority of them, shall, over their signatures, certify to the secretary of State that the requirements of this act have been complied with. Such certificate shall be known as the return of the corporators. Upon the filing of the return, and the receipt of the charter fee hereinafter provided for, and upon the payment to him of a fee of \$3 for the recording of the return, the secretary of State shall issue to the board of corporators a certificate, to be known as the charter, that the corporation has been fully organized according to the laws of South Carolina, under the name and for the purpose indicated in the written declaration, and that they are fully authorized to commence business under their charter, a copy of which charter shall be recorded in the office of the register of mesne conveyance or clerk for each county where such corporations shall have a business office: Provided, That in cases when by the terms of the declaration the capital stock of the corporation is to be paid in installments the charter may be issued when 50 per cent. of the first installments of the capital stock has been paid in and the provisions of this act in other respects complied with. Any charter issued hereunder may wind up the affairs of the corporation by resolution of the stockholders representing the majority of the capital stock, said resolution to be signed by the president and secretary, or other officers of the corporation, and forwarded to the secretary of State, to be filed and recorded as hereinbefore provided for declaration and return: Provided, That such resolution shall not bar an action for two years

thereafter against the corporation or any of its members for any liability incurred during the existence of the corporation. A copy of the certificate issued by the secretary of State to board of corporators, and known as the charter, when attested and certified by the secretary of State or the register of mesne conveyance of the county where such certificate is recorded, or by the deputy of either of them, shall in all courts and places be evidence of the due organization and existence of the corporation and of the matters specified in such certificate.

Foreign corporation, filing of charter. § 1467.

[Corporation receiving charter and doing work under it, cannot deny acceptance of it. *McKay v. Board*, 20 S. C. 156.]

§ 6. No irregularity in complying with the provisions of this act shall be held to vitiate the incorporation until a direct proceeding to set aside and annul the charter be instituted by the proper authorities of the State; and all acts done and contracts entered into shall have the same force and effect as if no irregularity had existed.

Actions to annul charters. Code Civ. Pro. §§ 424-441.

[Governor's proclamation declaring a corporation dissolved by forfeiture, cannot by itself have that effect. *Shand v. Gage*, 9 S. C. 187.

Failure to allege in complaint performance of conditions precedent to corporate existence, not demurrable. *R. R. Co. v. White*, 14 S. C. 51; *R. R. Co. v. Garland*, *id.* 63.]

§ 7. Upon the issuance of the charter by the secretary of State, the board of corporators shall turn over to the proper officers of the corporation all subscription lists or other papers they have taken as corporators, and all such papers shall be as valid as if taken and made by the corporators.

§ 8. The declaration, the corporators' commission, the corporators' return and the charter shall be recorded by the secretary of State in books kept by him for that purpose.

Charter to be filed. § 1467. Copies of, furnished. § 1468. Filing same. § 5, ante.

§ 9. The board of corporators on making their return shall pay to the secretary of State a charter fee graded as follows: \$5 fee for capital stock of \$5,000, or less; \$10 fee for capital stock of more than \$5,000, up to and including \$25,000; \$15 fee for capital stock of more than \$25,000, up to and including \$50,000; \$20 fee for capital stock of more than \$50,000, up to and including \$100,000; \$25 fee for capital stock for more than \$100,000, up to and including \$250,000, and \$1 additional for each \$10,000 increase or fraction thereof above \$250,000.

New charter; increase or decrease of capital — Act, March 9, 1896, § 10.

All charter fees received by the secretary of State shall be turned over quarterly to the State treasurer.

§ 10. (As amended March 5, 1897.) Any corporation heretofore created which has not forfeited its charter, and any corporation created by the general assembly of 1894, may surrender its charter and secure a new charter under this act; and any such corporation or any corporation created under this act may have its name changed or its charter amended in any particular under this act. Any corporation chartered previous to the approval of this act desiring to increase its capital stock shall, before such increase be allowed and resolutions filed and recorded, pay to the secretary of State the fees prescribed in this act. Fees for said increase to be paid as on capital stock: \$5 for all amounts up to and including \$5,000, increasing as provided in section 9 of this act; Provided, That the granting of such new charter or such amendments shall not operate in any way to prejudice the claims of creditors of such corporation or to relieve such corporation of any liability already created or assumed; but that although operating under a new charter it shall be regarded as the same corporation. In order to obtain such new charter or such amendment of charter, the board of directors, trustees or managers shall call a stockholders' meeting, giving at least thirty days' notice of the time, place and purpose of said meeting either by the mailing of written notice to each stockholder, or such meeting may be called by the president of the corporation, or by any stockholder owning in aggregate 20 per cent. of the capital stock, in the manner above provided. If a majority of the stock of the corporation be present at such meeting in person or by proxy and a resolution asking for a new charter or an amendment of charter be adopted by a majority vote of the shares represented at the meeting, then the board of directors, trustees or managers, or a majority of them, shall certify such resolution, over their signatures, to the secretary of State. Such resolution petitioning for such new charter or amendment shall set forth the date of the original charter of the company by reference to the act of the general assembly or to the record in the office of the secretary of State, and shall in other respects conform to the form of the declaration provided for in section 1 of this act. The secretary of State, upon the filing of such declaration and upon the payment of the charter fee in cases where an increase of capital stock is petitioned for, and upon the payment of a fee of \$3, shall issue to the corporation a new charter or an amended charter in accordance with the terms of the petition. All papers connected with the granting of such new charters or of such amendments shall be recorded as provided in section 8 of this act.

Any corporation heretofore or hereafter created and organized under any general or special act of the legislature of this State may decrease its capital stock in either of the following cases:

"a." When in the judgment of the board of directors the actual capital of the company has for any cause been impaired and is less than the par value of the shares representing the same. In such cases the nominal capital may be reduced to what, in the judgment of the board of directors, is the actual value of the company's stock. When the capital is thus reduced, the outstanding certificates shall be called in and certificates of the reduced capital apportioned among the stockholders according to their respective holdings; Provided, however, That such deduction shall in no way impair the liability of the stockholders to creditors upon claims against the company existing at the time of such reduction.

"b." When a company owing no debts desires to reduce its capital to a given amount, and to distribute among the stockholders its capital to a given amount, and to distribute among its stockholders its capital in excess of such amount. In such case the outstanding certificates shall be called in, and the surplus capital and certificates for the reduced stock shall be apportioned among the stockholders according to their respective holdings.

"c." That the following provisions shall govern a reduction of capital in either of the cases mentioned: Should any stockholder fail to surrender his certificate or certificates for conversion into certificates of the reduced stock, such certificate or certificates shall after such reduction represent only the amount of stock in the reduced capital to which the holder would be entitled. Should the interest of any stockholder require the issue of a fractional part of a share, such fractional part of a share may be embodied in a certificate for one or more full shares, or when necessary a separate certificate issued therefor. Whenever by resolution of the board of directors a reduction of capital is determined upon, a meeting of the stockholders shall be called to consider such resolution after a notice of thirty days by publication at least once a week in some newspaper published in the county where the company has its principal place of business, which notice shall state the time and place of meeting, the purpose for which it is called and the minimum amount to which it is proposed that the capital shall be reduced. The vote of two-thirds of the stock of the company shall be necessary to make a reduction. The board of directors shall certify the resolution of the stockholders to the secretary of State and that all the requirements of this act have been complied with; and, when capital is to be distributed, shall further certify that the company owes no debts. They

Business corporation; renewal of charter — Act, March 9, 1896, §§ 11-14.

shall likewise return to the secretary of State the original charter or certificate of incorporation for the indorsement herein mentioned. The secretary of State shall thereupon record the certificate of the board of directors, and shall likewise record and indorse upon the charter a certificate of the reduction, and shall forthwith return the charter with the indorsement thereon to the board of directors. The certificate of reduction shall be recorded across the face of the record of the charter in the office of the register of mesne conveyances or clerk of the court, where the charter is required by law to be recorded, and the reduction shall be authorized when the certificate is lodged for record in said office.

"d." That for the service herein required by him the secretary of State shall be entitled to a fee of five dollars, which shall accompany the certificate of the board of directors.

"e." That any director who shall knowingly and willfully make or cause to be made any fraudulent misrepresentation in the certificate required by this act shall be guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than two years, or both, in the discretion of the court.

§ 11. (As amended March 5, 1897.) No expenses shall be attached to the granting of charters or amendments thereto further than the fees as specified herein. Provided, That the total fees for the charter of any church, cemetery, company, Freemason or Odd Fellows, or Knights of Pythias lodge, or any other charitable, social, educational or religious society, shall not exceed the sum of two dollars, to be paid to the secretary of State upon the filing of the petition for incorporation.

§ 12. (As amended March 5, 1897.) All charters granted under the provisions of this act shall continue of force perpetually unless limited by the terms of the petition: Provided, That all corporations shall always have the right to go into liquidation and to wind up their affairs, upon a stockholders' vote representing a majority of capital stock had after such notice as is provided in section 10.

If the charter of any corporation under this act shall hereafter expire by limitation of time, such charter may be renewed (to continue of force perpetually unless limited by the terms of the petition, and to be subject to amendment or repeal by or under legislative authority) in the following manner: A petition shall be filed with the secretary of State by any three or more of the officers, stockholders or members of such corporation for renewal of the charter thereof, setting forth such charter and the date of its expiration: and thereupon the secretary of State shall, on payment to him of the charter fees prescribed by law, issue

a certificate of renewal of such charter and deliver the same to the petitioners — such certificate to be to the following purport:

"The State of South Carolina; Whereas being three or more of the officers, stockholders or members [as the case may be] of the corporation known by the name of [here state name of corporation] and chartered by on the day of, A. D. [here state how and when chartered], have filed with me their petition for renewal of the charter of such corporation: Now, know all men by these presents, That the charter of the said corporation is hereby renewed, with all the franchises, powers, rights, privileges and immunities, and subject to the responsibilities and liabilities, granted and imposed heretofore to and on such corporation, in perpetuity or for years [as the case may be]. Witness my hand and seal of office this day of, A. D.

"[L. S.]
"Secretary of State."

Upon the issuing of such certificate of renewal the charter of such corporation shall thereupon be renewed, and the corporation shall be entitled to and vested with all the franchises, powers, rights, privileges, immunities and property enjoyed, possessed and owned by it at the expiration of its charter, in all respects as if such charter had not expired, and subject to the responsibilities and liabilities to which it was subject at the time of such expiration; and all acts done by such corporation after the expiration of its charter shall thereupon be as valid as if such charter had not expired. And such certificate of renewal shall be recorded in the secretary of State's office, and also in the office of the register of mesne conveyances or clerk, as required by section 5 of this act, and a certified copy thereof shall be evidence as provided in said section 5 as hereby amended.

The secretary of State shall publish with the acts of the general assembly a list of all such certificates of renewal as he is now required by law to do in the cases of original charters issued by him.

§ 13. All elections for board of directors, trustees or managers of all corporations formed under this act shall be conducted as provided in article 9, section 11, of the Constitution of this State, ratified on the 4th day of December, 1895.

See § 4, ante.

§ 14. Any corporation chartered under the provisions of this act, and any corporation whose charter may be amended under this act, may increase the capital stock to any amount upon securing the necessary amend-

ment to its charter, as provided in section 10 hereof: Provided, That such stockholder be given the preference by taking the increase in proportion to the amount of the original stock he may own.

See § 1507 and cross-references. Stock, how increased. §§ 1508-1510.

§ 15. Every corporation chartered under this act shall have the following powers: 1. To have perpetual succession. 2. To sue and be sued by the corporate name. 3. To have a common seal and to alter the same at pleasure. 4. To prescribe the mode of transferring the shares of the corporation. 5. To make contracts, to loan money, to acquire and to transfer property, both real and personal, including shares of stock in other corporations, possessing the same powers in such respects as individuals now enjoy. 6. To make by-laws, and all rules and regulations deemed expedient for the management of its affairs, not inconsistent with the Constitution and laws of this State or of the United States. 7. To have a lien upon the shares of its stockholders to enforce the payment of installments due upon the capital stock, to provide and to enforce the collection of such fines and penalties for delinquency in payments of its installments upon the capital stock as its by-laws may fix, not to exceed 10 per centum on account due. 8. To borrow money for the purpose of carrying out the objects of its charter; to make notes, bonds or other evidences of debt; and upon a vote of the stockholders, had after such notice as is provided in section 10 of this act, to secure the payments of its obligation by mortgage or deed of trust on all or any of its property and franchises, both real and personal.

As to general powers of corporations, see § 1504, notes and cross-references.

[The right to make contracts is incidental to corporate existence. *Ober v. Blalock*, 40 S. C. 31; s. c., 18 S. E. Rep. 264. And unless restrained by statute, corporations may contract the same as natural persons, and their contracts depend upon the same principles. *Ex parte Benson*, 18 S. C. 38. Such a contract may be binding on the parties, though it be an abuse of corporate powers for which the corporation may be answerable to the government. *Bank v. Hammond*, 1 Rich. 281.

A corporation, to whom such power has not been expressly given, cannot organize a subordinate branch. *Lagrove v. Timmerman*, 24 S. E. Rep. 290.

A corporation cannot relieve itself of its debts by going out of business. *Jones v. Herald Co.*, 44 S. C. 526; s. c., 22 S. E. Rep. 731.

Trustees of a company borrowing money for its use stand as sureties for the corporation, and have the right to the security of a mortgage given by them. *Bank v. Campbell*, 2 Rich. Eq. 179.

When stockholders become by contract individually sureties on bond or mortgage of company, creditors have no equity to compel lender to do, what. *Manf. Co. v. Bank*, 6 Rich. Eq. 227.

What indorsement of note to president of a corporation is sufficient to make it corporate prop-

erty, and liable to be given in evidence as discount in a suit by drawer against the company. *Dupont v. Ferry Co.*, 9 Rich. 255.

A stockholder is bound by his subscription though he subscribes under mistaken belief that he might forfeit his stock at pleasure. *R. R. Co. v. Rodrigues*, 10 Rich. 278.

Where charter declares that the share of defaulting stockholders "shall be liable to forfeiture, and the company may declare the same forfeited, and vested in the company," the option to forfeit is with the company, and not with the stockholders. *R. R. Co. v. Rodrigues*, 10 Rich. 278; *R. R. Co. v. Cathcart*, 4 id. 89.

Where contract does not call for any specific demand for payment, general demand is all that need be alleged. *R. R. Co. v. Garland*, 14 S. C. 63.

Stockholder sued on his stock subscription should have credit for his advances to the company. *Nettles v. Marco*, 33 S. C. 47; s. c., 11 S. E. Rep. 595. And when directors have released such subscriber and recognized such advances made as a debt which was reduced to judgment, a subsequently appointed receiver of the company cannot recover such subscription for subsequent creditors. *Id.*

Where defendant denies that he signed or authorized the signing of his name to a stock subscription, or ever ratified it, the issues are for the jury. *Williams v. Benet*, 34 S. C. 112; s. c., 13 S. E. Rep. 97. A subscriber to stock cannot avoid liability by showing an agreement between himself and a debtor, unknown to the corporation, to pay the installments. *Id.*

The right given to sell stock for unpaid subscriptions is only cumulative to right to sue for delinquency. *Catawba v. Hood*, 42 S. C. 203; s. c., 20 S. E. Rep. 91.

Without express undertaking, bank not bound by law to protect from forfeiture stock deposited with it as security for a debt, by payment of installments in arrear. *Bank v. Douglas*, 2 Speer, 329.

In an action given for shares of stock, the answer pleading failure of consideration does not state a defense, as stock is an unnegotiable security. *Jones v. Garlington*, 44 S. C. 533; s. c., 22 S. E. Rep. 741.]

§ 16. At least one meeting of the stockholders shall be held annually in this State, at such time and place and after such notice as the by-laws provide. In all stockholders' meetings each stockholder shall be entitled to one vote for each share of stock held or owned by such stockholder.

See § 4, ante.

§ 17. No stock shall be issued by any corporation until fully paid, except in cases of corporations when by the terms of the petition the capital stock is to be paid in in installments; and no transfers of stock shall be valid except as between the parties thereto until the same shall have been regularly entered upon the books of the corporation.

Manner of transfer determined by by-laws. § 1504 (6). Increase of stock. § 1507, and cross-references.

[Stock subscriptions may be made payable upon such terms as are agreed upon between the corporation and the stockholders. *R. R. Co. v. Garland*, 14 S. C. 63.

Stock is an unnegotiable security. *Jones v. Garlington*, 44 S. C. 533; s. c., 22 S. E. Rep. 741.]

Business corporations; meetings, etc.—Act, March 9, 1896, §§ 18-32.

§ 18. Corporations organized for any purpose under the provisions of this act shall have power to construct and operate a railroad, electric railway, tramway, turnpike or canal, for their own use and purposes, and shall have the right to effect a crossing with any existing railroad or public roads as is now provided by law for railroad corporations; but they shall have no power to condemn lands except for crossing any existing railroad or public road, as herein provided.

See Const., art. I, § 17, and cross-references. Foreign corporation shall not operate railroad. *Id.*, art. IX, § 8.

[See *Ex parte Bacot*, 36 S. C. 125; s. c., 15 S. E. Rep. 204.]

§ 19. No stockholder in any corporation organized under the provisions of this act for banking purposes shall be eligible to election as a director, manager or trustee who is not the owner of at least ten shares of stock in said corporation.

§ 20. The books of any corporation organized under this act shall be open to the inspection of any stockholder at any and all times.

§ 21. Any corporation organized under the provisions of this act shall cease to exist by a non-user of its franchises for five years at any one time: Provided, That this shall not relieve any stockholder of any liability incurred during the existence of said corporation.

Corporations must organize in two years. § 1506. Actions to annul charters. Code Civ. Pro., § 426.

[A corporation which has gone out of business cannot be sued. *Jones v. Herald Co.*, 22 S. C. 731. A corporation cannot relieve itself of its debts by going out of business. s. c., 44 S. C. 526; s. c., 22 S. E. Rep. 731.

See *Ex parte Bacot*, 36 S. C. 125; s. c., 15 S. E. Rep. 204.]

§ 22. A failure to hold meetings or elect directors, trustees or managers on the day appointed by the by-laws shall not work a forfeiture of the charter of the company, but a meeting may be called hereafter by the president, or by the stockholders owning one-fifth of the capital stock of the corporation, by giving such notice as the by-laws may require for annual meetings.

§ 23. The stock of any corporation organized under this act shall be deemed personal property.

§ 24. At all meetings of stockholders of corporations chartered under this act, a majority of the stock of such corporation shall be present, in person or by proxy, to constitute a quorum, and a majority vote of the shares represented shall be necessary to the adoption of any motion or resolution, unless the by-laws of the corporation provide for a different quorum.

§ 25. Any officer or stockholder who shall knowingly and willfully make or cause to be made any fraudulent misrepresentation as to either capital, property or resources of the corporation shall be held guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$2,000 or by imprisonment for not longer than two years, or both, at the discretion of the court.

§ 26. The shares of every corporation shall be numbered, and every stockholder shall be entitled to a certificate under the seal of the corporation, and in such form and signed by such officers as the corporation may determine, certifying his property in such shares as are expressed in the certificate.

§ 27. If any corporation fails to organize within two years from the date of the commission appointing the board of corporators the commission shall be null and void.

See § 1506.

§ 28. Neither stock nor bonds shall be issued by any corporation except for money paid, property delivered, or labor done; and all fictitious increase of stock or indebtedness shall be void.

§ 29. Any corporation organized under this act engaged in the transportation of freight or passengers by means of steamboats or otherwise upon any of the navigable waters of this State shall have the authority to exact reasonable tolls and fees for the use of wharves or landings located upon lands that are the property of such corporation or that are under lease or control of such corporation.

§ 30. This act shall take effect from and after the date of approval by the governor.

§ 31. Every corporation created under the provisions of this act shall be subject to the liabilities now imposed by law, and shall have all the rights, powers and privileges now provided for by law.

§ 32. All acts and parts of acts inconsistent with this act are hereby repealed.

(Approved the 9th day of March, A. D., 1896.)

Actions; summons, service — Code Civ. Pro., §§ 88, 129, 130, 155, 156.

PART FOURTH — THE CODE OF CIVIL PROCEDURE.

Part I. Courts of Justice and their Jurisdiction.

TITLE V. COURTS OF TRIAL JUSTICES.

Sec. 88. Service of process upon corporations.

§ 88. The following rules shall be observed in the courts of trial justices:

15. The provisions of this Code of Procedure, respecting * * * service of process upon corporations, shall apply to these courts.

See Code Civ. Pro., §§ 155-158.

Part II. Civil Actions.

TITLE II. TIME OF COMMENCING CIVIL ACTIONS.

CHAPTER IV.

General Provisions.

Sec. 129. This title not to apply to evidences of debt issued by moneyed corporations.

130. Nor to actions against directors or stockholders to recover penalty or forfeiture.

§ 129. This title shall not affect actions to enforce the payment of bills, notes or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money.

See § 1504, subd. 2, and cross-references.

§ 130. This title shall not affect actions against directors or stockholders of a moneyed corporation, or banking associations, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created, unless otherwise provided in the law under which such corporation is organized.

[Liability imposed by charter upon stockholders of bank at its failure, barred in four years after suspension of specie payment. *Terry v. Calnan*, 13 S. C. 220.]

TITLE V. MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 155. Summons, how served on corporation.

156. Service by publication on foreign corporation.

158. When service by publication complete.

§ 155. The summons shall be served by delivering a copy thereof as follows:

1. If the suit be against a corporation, to

the president or other head of the corporation, secretary, cashier, treasurer, a director, or agent thereof. Service upon any person occupying an office or room in any railway station, and attending to and transacting therein any business of any railroad, shall be deemed service upon the corporation under the charter of which such railroad is authorized by law; and such person shall be deemed the agent of said corporation notwithstanding he may claim to be the agent of any other person or corporation claiming to operate said railroad by virtue of any lease, contract or agreement. Such service can be made in respect to a foreign corporation only when it has property within the State, or the cause of action arose therein, or where such service shall be made in this State personally upon the president, cashier, treasurer, attorney or secretary, or any resident agent thereof. * * *

See § 1504, subd. 2, and cross-references, and Code Civ. Pro., § 88. Local agent for process to be appointed. Const., art. IX, § 4.

[Corporation has legal place of residence wherever corporate business is done. *Cromwell v. Ins. Co.*, 2 Rich. 512.

May have special and constructive residences; what is legal residence. *Glaize v. R. R. Co.*, 7 Strobb. 70.

Motion to set aside judgment by default against corporation for irregularities in summons, refused, when. *Clarke v. Manf. Co.*, 8 S. C. 22.

What is necessary to a legal service on a foreign corporation. *Hester v. Rasin Co.*, 33 S. C. 609; s. c., 12 S. E. Rep. 563.

Foreign corporation may appear solely to test service upon a party "as resident agent thereof" and have service set aside. *Id.*

It may waive service and submit itself to jurisdiction of court by appearing generally and answering on the merits. *Chafee v. Postal Tel. Co.*, 35 S. C. 372; s. c., 14 S. E. Rep. 764.

Under Code Civ. Pro., § 155, jurisdiction of a foreign corporation may be had without attachment by service on a resident agent. *Pollock v. Carolina I. B. & L. Assn.*, 25 S. E. Rep. 977.

Service on a foreign corporation by delivery of copy to resident held not invalid because of the appointment of a temporary receiver in another State. *Id.*

Service may be had on a local soliciting agent of a foreign building association who receives dues, and is paid a commission, and negotiated the loan out of which the action arose. *Id.*

§ 156. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, the clerk of the court of common pleas, master, or the probate judge of the county where the trial is to be had, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to

Injunction; attachment — Code Civ. Pro., §§ 158, 178, 245, 248, 256-258.

real property in this State, such court, judge, clerk, master, or judge of probate, may grant an order that the service be made by publication of the summons in either of the following cases: 1. Where the defendant is a foreign corporation, has property within the State, or the cause of action arose therein. * * * Where publication is ordered, personal service of the summons out of the State is equivalent to publication and deposit in the post-office. * * *

[Personal service out of the State, for order of publication, on foreign corporation, does not give jurisdiction. *Tillinghast v. Boston Co.*, 39 S. C. 484; s. c., 18 S. E. Rep. 120.]

Service on a foreign corporation can only be made in proceedings in rem. *Id.*

This section relates only to courts of record. Trial justice has no authority to grant order of publication. *Ferguson v. Gilbert*, 17 S. C. 26.

An order for service by publication is absolutely required, even where there is personal service or its equivalent out of the State. *Riker v. Vaughan*, 23 S. C. 187.

But when publication has been ordered, personal service out of the State is equivalent to publication and deposit in post-office. *Darby v. Shannon*, 19 S. C. 526.

Only defendant can take advantage of alleged insufficiency in service of summons. *Id.*

§ 158. In the cases mentioned in section 156, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

TITLE VI. OF THE PLEADING IN CIVIL ACTIONS.

CHAPTER V.

General Rules of Pleading.

Sec. 178. Verification of pleading by officer.

§ 178. * * * When a corporation is a party, the verification may be made by any officer thereof; * * *

See § 1504, subd. 2, and cross-references.

TITLE VII. OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

- Ch. 3. Injunction.
4. Attachment.
5. Provisional remedies.

CHAPTER III.

Injunction.

Sec. 245. Security upon injunction to suspend business of corporation.

§ 245. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof. Nor shall it be granted without due notice of the application therefor, to the proper officers of the corporation, except where the State is a party to the proceeding, and except in proceedings to enforce the liability of stockholders in corporations and associations for banking pur-

poses, as such proceedings are or shall be provided by law, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the court or judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the court shall direct.

See § 1504, subd. 2, and cross-references.

CHAPTER IV.

Attachment.

Sec. 248. Property of foreign corporations may be attached.

256. Interest in corporation liable to attachment.

257. Attachment, how executed on corporate stock.

258. Certificate of defendant's interest to be furnished.

§ 248. In any action * * * against a corporation created by or under the laws of any other State, government or country, * * * the plaintiff, at the time of issuing the summons, or any time afterwards, may have the property of such * * * corporation attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the plaintiff may recover; and, for the purposes of this section, an action shall be deemed commenced when the summons is issued: Provided, however, That personal service of such summons shall be made or publication thereof commenced within thirty days.

See § 1504, subd. 2, and cross-references.

§ 256. The rights or shares which such defendant may have * * * in the stock of any association or corporation, together with the interest and profits thereon, * * * shall be liable to be attached, and levied upon, and sold, to satisfy the judgment and execution.

§ 257. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff or constable, shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or the secretary, cashier or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

§ 258. Whenever the sheriff or constable shall, with a warrant of attachment or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching or levying upon such property, such officer, debtor or individual shall fur-

Receivers; foreign corporations — Code Civ. Pro., §§ 265, 423, 424.

nish him a certificate, under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or innumbrance thereon, or the amount and description of the property held by such association, corporation, or individual for the benefit of or debt owing to the defendant. If such officer, debtor or individual refuse to do so, he may be required by the court or judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

Copies of papers furnished. § 1468.

CHAPTER V. Provisional Remedies.

Sec. 265. Receiver may be appointed for insolvent corporation.

§ 265. A receiver may be appointed by a judge of the circuit court, either in or out of court:

4. When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property within this State of foreign corporations. Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them, not exceeding five per cent. on the amount received and disbursed by them.

5. In such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure.

Court may wind up affairs of foreign corporation. § 1470. See § 1504, subd. 2, and cross-references.

[In an action to wind up insolvent corporation, when order for an injunction and receiver is obtained, no judgment afterwards recovered by a creditor entitles it to any priority over other claims. *Clinkscales v. Manf. Co.*, 9 S. C. 318.

Petition by stockholder in his own name for appointment of receiver for the corporation held sufficient. *Wenzel v. Brewing Co.*, 26 S. E. Rep. 1.]

TITLE XIII. ACTIONS IN PARTICULAR CASES.

Ch. 1. Actions against foreign corporations.

2. Actions in place of scire facias, quo warranto, and of information in the nature of quo warranto.

CHAPTER I.

Actions against Foreign Corporations.

Sec. 423. Where and by whom brought.

§ 423. An action against a corporation created by or under the laws of any other

State, government, or country, may be brought in the circuit court —

1. By any resident of this State, for any cause of action.

2. By a plaintiff not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated, within this State.

See Stat., § 1471, and Code Civ. Pro., §§ 155, 156, 248.

[When action may be brought in courts of this State against foreign corporations, by residents and non-residents. *Central Co. v. Georgia*, 32 S. C. 319; s. c., 11 S. E. Rep. 192.

The court of common pleas has jurisdiction of actions against foreign corporations only as prescribed by statute, unless by appearance and answer such corporation submits itself to the jurisdiction. *Chafee v. Telegraph Co.*, 35 S. C. 372; s. c., 14 S. E. Rep. 764. The facts necessary to give jurisdiction to such court will be presumed. Thus a plaintiff suing a foreign corporation which appears in answer, will be presumed to be a resident of this State. *Id.*

Action cannot be instituted in this State against a foreign corporation having no agent here, on a contract made here; nor can there be a personal judgment against such corporation. *Tillinghast v. Boston Co.*, 38 S. C. 319; s. c., 17 S. E. Rep. 31, 725.

Complainant alleged that plaintiff was a corporation of another State, had sold goods to defendant at an agreed price, and that the account was past due and unpaid. Held, that complaint did not show a want of capacity of plaintiff to sue, nor fall to state a cause of action. *Cone v. Poole*, 41 S. C. 70; s. c., 19 S. E. Rep. 203.

Is a national bank a foreign corporation in the sense that it may not plead statutes of limitation? *Rose v. Bank*, 41 S. C. 192; s. c., 19 S. E. Rep. 487.]

CHAPTER II.

Actions in Place of Scire Facias, Quo Warranto, and of Informations in the Nature of Quo Warranto.

Sec. 424. Scire facias and quo warranto abolished and this chapter substituted.

425. Action may be brought, by direction of the legislature, by the attorney-general, to vacate a charter.

426. Action to annul a corporation, when and how brought by the attorney-general, by leave of the supreme court.

427. Leave to sue, how obtained.

428. Action upon information or complaint of course.

430. Relator, when to be joined as plaintiff.

436. One action against several persons claiming office and franchise.

437. Penalty for usurping office, or franchise, how awarded.

438. Judgment of forfeiture against a corporation.

439. Costs against a corporation, or persons claiming to be such, how collected.

440. Restraining corporation and appointment of receiver.

441. Copy of judgment-roll against corporation, when to be filed.

§ 424. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished; and the remedies heretofore obtainable in those forms may be obtained by civil actions under the provisions of this

chapter. But any proceeding heretofore commenced, or judgment rendered, or right acquired, shall not be affected by such abolition.

See § 1504, subd. 2, and cross-references; § 6, at p. 18.

[See *Alexander v. McKenzie*, 2 S. C. 81; *State v. Bowen*, 8 id. 382.]

§ 425. An action may be brought by the attorney-general, in the name of the State, whenever the legislature shall so direct, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact, by the persons incorporated, or by some of them, or with their knowledge and consent.

Foreign corporation, administration of assets. § 1470.

§ 426. An action may be brought by the attorney-general, in the name of the State, on leave granted by the supreme court or a justice thereof, or a circuit judge, for the purpose of vacating the charter or annulling the existence of a corporation, other than municipal, whenever such corporation shall —

1. Offend against any of the provisions of this Code of Procedure, or the acts creating, altering, or renewing such corporation; or,

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

5. Whenever it shall exercise a franchise or privilege not conferred on it by law.

And it shall be the duty of the attorney-general, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and, upon leave granted, to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby.

Refusal to pay taxes forfeits charter. § 252. Failure to organize, § 1506.

[Governor's proclamation declaring corporation dissolved by forfeiture, cannot by itself have that effect. *Shand v. Gage*, 9 S. C. 187.]

§ 427. Leave to bring the action may be granted upon the application of the attorney-general; and the court or judge may, at dis-

cretion, direct notice of such application to be given to the corporation or to its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

§ 428. An action may be brought by the attorney-general, in the name of the State, upon his own information, or upon the complaint of any private party, or by a private party interested, on leave granted by a circuit judge, against the parties offending, in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any * * * franchise within this State, or any office in a corporation created by the authority of this State; or,

3. When any association or number of persons shall act within this State as a corporation without being duly incorporated.

[Quo warranto will not lie against one claiming office under a supposed corporation, if no such corporation exists. *State v. Lehre*, 7 Rich. 234.

Though quo warranto may issue against one claiming office under a corporation who was not elected by a majority of legal votes, yet the fact must be made to appear that, deducting the illegal votes he received, he was not elected. *Id.*]

§ 430. When an action shall be brought by the attorney-general by virtue of this chapter on the complaint of any private party, or by a person having an interest in the question, the name of such person shall be joined with the State as plaintiff; and in every such case the attorney-general or circuit judge, as the case may be, may require, as a condition precedent to bringing such action, that satisfactory surety shall be given to indemnify the State against the costs and expenses to be incurred thereby; and in every such case brought by the attorney-general where such surety is given, the measure of compensation to be paid by such person or persons to the attorney-general shall be left to the agreement, express or implied, of the parties.

[Whether the relator in an action to determine rights to a corporate office shall be required to give security for costs is in discretion of circuit judge. *Tharin v. Seabrook*, 6 S. C. 113.]

§ 436. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 437. When a defendant, whether a natural person or a corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such

defendant a sum not exceeding two thousand dollars, which fine, when collected, shall be paid into the treasury of the State.

§ 438. If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

§ 439. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by attachment or

process against the directors or other officers of such corporation.

§ 440. When such judgment shall be rendered against a corporation, the court shall have power to restrain the corporation, to appoint a receiver of its property, and to take an account, and make distribution thereof among its creditors; and it shall be the duty of the attorney-general, immediately after the rendition of such judgment, to institute proceedings for that purpose.

§ 441. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it shall be the duty of the attorney-general to cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State.

CRIMINAL LAW.

TITLE II. CRIMES AND MISDEMEANORS.

CHAPTER XI.

Offenses against Public Policy.

Sec. 194. Keeping of false books by corporations; penalty.

195. Fraudulent misrepresentation of capital, etc., of corporations, a misdemeanor.

§ 194. The intentional keeping of any false books by any corporation organized under chapters XLVIII or XLIX of part I of these statutes, whereby any one is injured, shall be a misdemeanor upon the part of those concerned therein, and they shall, upon trial

and conviction, be fined or imprisoned, in the discretion of the court.

§ 195. Any director or other officer or stockholder of any manufacturing company in this State who shall knowingly or willfully make, or cause to be made, any fraudulent misrepresentation, or misrepresentations, as to either the capital, property or resources of said corporation shall be held guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not more than two thousand dollars or imprisonment for not longer than two years, or both, at the discretion of the court.

See § 1500.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1893.

1. To prohibit trusts and combinations.
2. To prescribe further terms upon which foreign corporations may do business.
3. To provide for laborers' lien.

Act 1.

AN ACT to prohibit trusts and combinations and to provide penalties.

Section 1. Be it enacted by the general assembly of the State of South Carolina, That from and after the passage of this act, all arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporations, made with view to lessen, or which tends to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to

the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Whenever complaint is made upon sufficient affidavit or affidavits showing a prima facie case of violation of the provisions of the first section of this act by any corporation, domestic or foreign, it shall be the duty of the attorney-general to begin an action against such domestic corporation to forfeit its charter, and in case such violation shall be established the court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved, and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the attorney-general in said court against such corporation to determine the truth of such charge; and in case such charge shall be considered established, the effect of the judgment of the court shall be to deny to such corporation the recognition of its corporate existence in any court

Trusts and combines; foreign corporations — Acts, February 25, 1897, and March 2, 1897.

of law or equity in this State. But nothing in this section shall be construed to affect any right of action then existing against such corporation.

§ 3. Any violation of the provision of this act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall on conviction be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than six months or more than ten years, or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in section one of this act may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

§ 5. That any and all persons may be compelled to testify in any action or prosecution under this act: Provided, That such testimony shall not be used in any other action or prosecution against such witness or witnesses, and such witness or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify.

§ 6. Nothing contained in this act shall be taken or construed to apply to any person or persons acting in the discharge of official duties under the laws of this State.

§ 7. All acts in conflict with this act be, and the same are hereby, repealed.

(Approved the 25th day of February, A. D., 1897.)

Act 2.

AN ACT to further prescribe the terms and conditions upon which foreign corporations may do business within this State.

Section 1. Be it enacted by the general assembly, of the State of South Carolina, That from and after the passage of this act, in addition to all conditions now required by law, it shall be a further condition precedent to the right of any corporation created by or under the laws of any State of the American Union or of the District of Columbia, or of any foreign government, to do business in this State, that all actions or

suits arising out of the business or dealings of such foreign corporation with any citizen or corporation of this State or pertaining thereto commenced in the courts of this State shall be tried therein, any usage or law to the contrary notwithstanding.

§ 2. That it shall be a further condition precedent to the right of any such foreign corporation to do business in this State, that it shall be taken and deemed to be a part and parcel of all contracts entered into between such foreign corporations and a citizen or corporation of this State, and of the essence of such contracts, that all suits or actions of every kind whatsoever arising out of such contracts or pertaining to the same commenced in the courts of this State shall be tried therein, any usage or law to the contrary notwithstanding.

§ 3. That it shall be a further condition precedent to the right of any such corporation to do business in this State, that it shall be deemed and taken to be a part and parcel of all contracts entered into between such corporation and a citizen or corporation of this State, and of the essence of such contracts, that in all suits or actions arising out of such contracts or pertaining thereto the courts of this State shall have exclusive jurisdiction thereof where such actions or suits are commenced in the courts of this State, saving to any party to such action or suit the right of appeal to the supreme court of the United States as may be provided by law.

§ 4. That it shall be a further condition precedent to the right of any such corporation to do business in this State, that it shall be taken and deemed to be the fact, irrefutable, and part and parcel of all contracts entered into between such corporation and a citizen or corporation of this State, that the taking or receiving from any citizen or corporation of this State of any charge, fee, payment, toll, impost, premium or other moneyed or valuable consideration, under or in performance of any such contract, or of any condition of the same, shall constitute the doing of its corporate business within this State, and that the place of the making and of performance of such contract shall be deemed and held to be within this State, anything contained in such contract or any rules or by-laws of such corporation to the contrary notwithstanding.

§ 5. That all such corporations hereafter doing business in this State, as defined in this act, shall be deemed and held to be doing such business under and in pursuance of the terms and conditions of this act, and that such terms and conditions shall be deemed and taken in all the courts of this State to be a part and parcel of all contracts hereafter entered into between such corporations and a citizen or corporation of this State, anything contained in any such contract or in any rules or by-laws of such corporation to the contrary notwithstanding.

Laborer's lien — Act, March 5, 1897.

§ 6. That so much of all acts or parts of acts as may be inconsistent with or supplied by this act, be, and the same is hereby, repealed.

(Approved the 2d day of March, A. D., 1897.)

Act 3.

AN ACT to provide for laborer's lien.

Section 1. Be it enacted by the general assembly of the State of South Carolina, That from and after the passage and approval of this act all employes in factories, mines, mills, distilleries, and all and every kind of manufacturing establishments in this State, shall have a lien upon all output of the factory, mine, mill, distillery, or other manufacturing establishment in which they may be employed, either by the day or month, whether the contract be in writing or not, to the extent of such salary or wages as may be due and owing to them under the terms of their contract with their employer, such lien to take precedence over any and all other liens, except the lien for municipal, State and county taxes.

§ 2. That any one entitled to the provisions of this act may begin suit upon his or her demands in any court of competent jurisdiction, and at the time of commencing action may file with the officer out of whose court he desires process to issue an affidavit setting forth the facts out of which his or her alleged lien arose, the amount of same, and

shall designate the party alleged to be affected by said lien; thereupon it shall be the duty of said officer to issue his process in the nature of a warrant of attachment, directing the sheriff of the county or any lawful constable to seize so much of the property described in said affidavit as may be necessary to satisfy said alleged lien. The officer executing aforesaid process shall seize and take into his possession and custody, according to the mandate of said process, the property described, and shall hold the same until the final determination of the suit between the parties, following the usual practice in attachment cases as to sale after judgment, or even before judgment if the property seized be perishable and ordered sold by the court: Provided, That should the party claiming to be the legal owner of the property seized desire to do so, pending suit, he may furnish good, and sufficient security for the payment of such judgments as may be recovered by plaintiff against him in suit pending, to be approved by the officer issuing the process, and shall thereupon be entitled to the custody of the property seized, just as though the process had been issued against it.

§ 3. That the cost and fees of officers in this proceeding shall be the same as in the cases of attachment under the Code.

§ 4. That all acts and parts of acts inconsistent herewith are hereby repealed.

(Approved the 5th day of March, A. D., 1897.)

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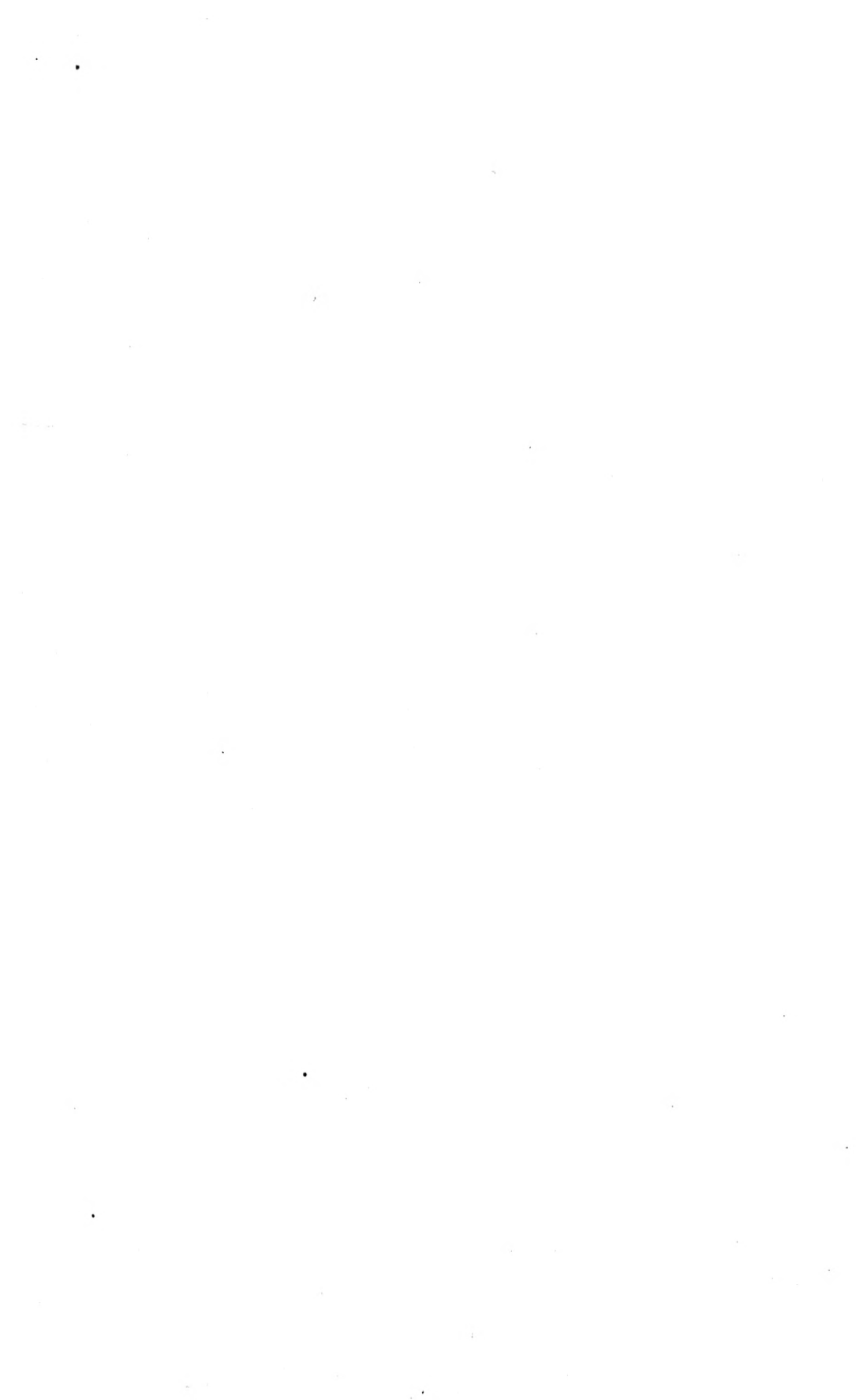
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SOUTH DAKOTA.

CONSTITUTION OF SOUTH DAKOTA—1890.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE III.

Legislative Department.

- Sec. 23. Private and special laws prohibited in certain cases.
26. Private corporation may not interfere with municipal improvements.

ARTICLE VI.

Bill of Rights.

- Sec. 12. Obligation of contract not to be impaired. Irrevocable grants of franchises not to be passed.
13. Private property not to be taken without just compensation.
18. No special privileges shall be granted.

ARTICLE XI.

Revenue and Finance.

- Sec. 8. Power to tax corporate property shall not be surrendered.

ARTICLE XVII.

Corporations.

- Sec. 1. Legislature shall provide by general laws for the organization of corporations.
2. Existing charters, under which organization shall not have taken place at time this Constitution takes effect, shall be invalid.
8. Legislature shall not remit forfeiture of charter of any corporation now existing.
4. Right of eminent domain.
5. Mode of electing directors of corporations.
6. Corporations to do business in this State must have one or more places of business.
7. No corporation shall engage in any business other than that authorized in its charter.
8. In regard to right of corporations to issue stocks or bonds.
9. Power reserved to legislature to alter, revise or annul existing charters.
10. Right to construct street railroad to be granted by local authorities.
11. Telegraph companies may construct lines. They may not consolidate with competing lines.
12. Railroads shall maintain a public office with the State directors of railroad corporations and shall make annual reports.

- Sec. 13. Rolling stock of railroads shall be considered personal property.
14. Competing railroads shall not consolidate.
15. Railroads declared to be public highways and railroad companies common carriers.
16. Railroads may connect with other roads.
17. Laws shall be passed to correct abuses and prevent extortion in rates.
18. Private property taken for public use shall have just compensation.
19. The term "corporation" defined.

ARTICLE III.

Legislative Department.

§ 23. The legislature is prohibited from enacting any private or special laws in the following cases:

* * * * *

9. Granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.

* * * * *

But the legislature may repeal any existing special law relating to the foregoing subdivisions. * * *

Creation of corporations. §§ 2880 et seq. See art. VI, § 18; art. XVII, § 1.

§ 26. The legislature shall not delegate to any special commission, private corporation, or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capital site, or to perform any municipal functions whatever.

ARTICLE VI.

Bill of Rights.

§ 12. No ex post facto law, or law impairing the obligation of contracts or making any irrevocable grant of privilege, franchise or immunity shall be passed.

Existing corporations may continue. § 3188. Actions to oust a corporation of its franchises. §§ 5345-5360. See art. XI, § 3. Power to alter or repeal reserved. §§ 2891, 2971.

Revenue and finance; corporations — Const., Art. vi, §§ 13, 18; Art. xi, § 3; Art. xvii, §§ 1-12.

[Provision in charter exempting lands of a corporation from taxation is a contract which cannot be impaired by subsequent legislation. *R. R. Co. v. County*, 3 Dak. 1; s. c., 12 N. W. Rep. 561.]

§ 13. Private property shall not be taken for public use, or damaged, without just compensation as determined by a jury, which shall be paid as soon as it can be ascertained and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or damaged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

See art. XVII, §§ 4, 18.

[See *R. R. Co. v. Covell*, 2 Dak. 483; s. c., 11 N. W. Rep. 106; *Ry. Co. v. Watertown*, 4 S. Dak. 323.]

§ 18. No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

See art. III, § 23.

ARTICLE XI.

Revenue and Finance.

§ 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

See art. VI, § 12. Taxation of corporations and corporate property. See Revenue Act of 1891 (as amended, 1893), at p. 30.]

[Provisions in a charter exempting lands from taxation constitute a contract which cannot be impaired by subsequent legislation. *R. R. Co. v. County*, 3 Dak. 1; s. c., 12 N. W. Rep. 561.]

ARTICLE XVII.

Corporations.

Section 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State; but the legislature shall provide by general laws for the organization of all corporations hereafter to be created.

See Const., art. III, § 23; art. VI, § 18. General laws for creation of corporations. §§ 2889 et seq.

- § 2. Same as Const. N. Dak., art. VII, § 132.
- § 3. Same as Const. N. Dak., art. VII, § 133.
- § 4. Same as Const. N. Dak., art. VII, § 134.
- § 5. Same as Const. N. Dak., art. VII, § 135.
- § 6. Same as Const. N. Dak., art. VII, § 136.

See Comp. Laws, §§ 3190 et seq.

[Section construed. *Wright v. Lee*, 2 S. D. 596.]

§ 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

General powers. § 2919.

§ 8. Same as Const. N. Dak., art. VII, § 138.

§ 9. The legislature shall have the power to alter, revise or annul any charter of any corporation now existing and revocable at the taking effect of this Constitution, or any that may be created, whenever in their opinion it may be injurious to the citizens of this State, in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

See Const., art. VI, § 12; Comp. L., § 2891.

§ 10. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

§ 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph in this State, and to connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulation to give full effect to this section. No telegraph company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise any other competing line of telegraph.

§ 12. Every railroad corporation organized or doing business in this State under the laws or authority thereof shall have and maintain a public office or place in this State for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in, and by whom;

the transfers of said stock; the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts or some officer or officers to be designated by law, of all their acts or doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

§ 13. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no laws exempting such property from execution and sale.

§ 14. Same as Const. N. Dak., art. VII, § 141.

§ 15. Railways heretofore constructed or that may hereafter be constructed, in this State, are hereby declared public highways, and all railroads and transportation companies are declared to be common carriers and subject to legislative control; and the legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight as such common carrier from one point to another in this State.

§ 16. Same as Const. N. Dak., art. VII, § 143.

§ 17. The legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

§ 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed, by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporation or individuals made by viewers or otherwise, and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury as in other civil cases.

See Const., art. VI, § 13; art. XVII, § 4

§ 19. The term "corporations" as used in this article shall be construed to include all joint-stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

"Corporation" defined. §§ 2889, 2894-2896.

THE COMPILED LAWS OF DAKOTA—1887.

CIVIL CODE.

(NOTE.—The Compiled Laws of the Territory of Dakota are still in force in the State of South Dakota, except where altered or repealed by the Constitution or legislative enactments.)

DIVISION SECOND. PROPERTY.

Part III. Personal or Movable Property.

TITLE II. PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER III.

Corporations.

ARTICLE I. THE CREATION OF CORPORATIONS.

- Sec. 2889. Corporations creatures of the law.
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 2891. Power reserved.
 2892. Incorporation cannot be attacked collaterally.
 2893. Must have corporate name.
 2894. Classes of corporations.
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 2897. Articles of incorporation; officers.
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 2900. Private corporations, for what purpose.
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 2903. Railroads and wagon roads.
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 2905. Certificate to issue.
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 2907. Copy of the articles as evidence.
 2908. Not necessary to prove incorporation, when.
 2909. Stockholders; members.
 2910. Stock of minor insane person or decedent.
 2911. Married woman's share of stock.

§ 2889. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

Term "corporation" includes what. Const., art. XVII, § 19. Term of existence must be stated in articles. § 2902. If not limited existence is perpetual. § 2919. Dissolution and revival. §§ 2938–2942.

§ 2890. A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations.

See Const., art. III, § 23; art. VI, § 18; art. XVII, § 1. Corporate grant must be accepted. § 2893.

[Copartnership changed to a corporation, the existence of the corporation worked eo instanti

the dissolution of partnership. *Hennessey v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.

All the capital stock of the corporation that belongs to same parties should furnish the firm capital stock. *Id.*]

§ 2891. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature.

See Const., art. VI, § 12.

§ 2892. The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had, and action brought, at the suit of the territory, in the manner prescribed in the Code of Civil Procedure.

As to the mode of attacking corporate existence, see §§ 5345 et seq. Not necessary to prove corporate existence. § 2908. Defects may be cured. See Act of 1890, at p. 29.

[Evidence sufficient to establish existence of de facto corporation. *Mining Co. v. Noonan*, 3 Dak. 189; s. c., 14 N. W. Rep. 426.

One having contracted with a corporation is estopped to question its corporate existence. *School District v. Alderson*, 6 Dak. 145; s. c., 41 N. W. Rep. 466.

Persons who have had legitimate dealings with a de facto corporation by its corporate name are precluded from denying its legal existence. *Wright v. Lee*, 2 S. Dak. 596; s. c., 51 N. W. Rep. 706.

A party who has contracted with a de facto corporation, as such, cannot be permitted, after receiving benefits of his contract, to allege any defects in organization of such corporation affecting its capacity to enforce such contract; but all such objections, if valid, are available only on behalf of the sovereign power of the State. *B. & L. Assn. v. Chamberlain*, 4 S. Dak. 271; s. c., 56 N. W. Rep. 897.

Neither will stockholders who subscribe for stock, or assist in organizing a corporation under a charter, and reap the benefits of the law, and thereby induce persons to credit the corporation and do business with it on the faith of its being legally organized, be permitted to allege that the law under which it was organized is unconstitutional, as a means of avoiding personal liability. *Id.*]

§ 2893. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended.

Corporation has succession by corporate name. § 2919 (1).

Classification of corporations; articles of incorporation — Civ. Code, §§ 2894-2908.

§ 2894. Corporations are either: (1) Public; or, (2) Private.

§ 2895. Public corporations are formed or organized for the government of a portion of the territory. Such corporations are regulated by the Political Code, or by a local statute.

§ 2896. Private corporations are formed for the purpose of religion, benevolence, education, art, literature, or profit; and all corporations not public are private.

§ 2897. The instrument by which a private corporation is formed is called "articles of incorporation," or "certificate of incorporation." And one-third of the officers of such corporations shall be residents of this territory.

Contents of articles. §§ 2902, 2903.

§ 2898. In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.

§ 2899. Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

§ 2900. (As amended Laws of 1893, chap. 42.) Private corporations can be formed by the voluntary association of three or more persons upon complying with the provisions of this chapter for the following purposes, namely: Mining, manufacturing, mechanical, quarrying, and other industrial pursuits, and for any other lawful business; the construction or operation of railroads, wagon roads, irrigation ditches; for colleges, seminaries, churches, libraries, benevolent, charitable and scientific associations; for conducting the business of insurance, banks of discount and deposit (but not of issue) and for loan, trust and guaranty associations; Provided, however, That no insurance company shall be incorporated under the provisions of this act except by the voluntary association of seven or more persons.

Corporation must be created by general laws. Const., art. III, § 23; art. VI, § 18; art. XVII, § 1. Legal existence cannot be attacked collaterally. § 2892. Dissolution and revival. §§ 2938-2942.

[Evidence sufficient to establish existence of de facto corporation. *Mining Co. v. Noonan*, 3 Dak. 189; s. c., 14 N. W. Rep. 426.]

§ 2902. Articles of incorporation must be prepared setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of such of

them who are to serve until the election of such officers, and their qualifications.

6. If there be a capital stock, its amount and the number of shares into which it is divided.

See § 2897, and § 2892, note. Change in amount of capital stock. § 2936. Amendment of articles. See Act of 1890, at p. 31. Defects in organization may be cured. See Act of 1890, at p. 29.

§ 2903. The articles of incorporation of any railroad or wagon road must also state:

1. The kind of road intended to be constructed.
2. The place from and to which it is intended to be run, and all the intermediate branches.
3. The counties through which it is intended to be run.
4. The estimated length and cost of the road.

See § 2897, and § 2892, note; § 2902, cross-references.

§ 2904. The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this territory, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

§ 2905. Upon the filing of the articles of incorporation with the secretary of the territory, he shall issue to the corporation, over the great seal of the territory, a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles.

See § 2906.

§ 2906. Upon the filing of any articles of incorporation, as in the last section is prescribed, the secretary of the territory shall cause the same to be recorded in a book to be kept in his office for that purpose, to be called "the book of corporations," with the date of filing.

§ 2907. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of the territory, must be received in all courts and other places as prima facie evidence of the facts therein stated, and of the existence of such corporation.

Due incorporation cannot be questioned collaterally. § 2892.

§ 2908. In all civil actions brought by or against a corporation, it shall not be necessary to prove on the trial of the cause the

Stockholders; subscriptions; excess of stock — Civ. Code, §§ 2900-2917.

existence of such corporation, unless the defendant shall in his answer expressly aver that the plaintiff or defendant is not a corporation.

Corporate existence cannot be attacked collaterally. § 2892. See § 2919, subd. 2, cross-references.

[Above section does not relieve plaintiff from necessity of alleging in his complaint that defendant is a corporation. *State v. Ry. Co.*, 4 S. Dak. 261; s. c., 56 N. W. Rep. 894. Failure to so allege may be taken advantage of by general demurrer. *Id.*

When defendant is sued by a name, indicating that it is not a natural person, but a company of some kind, complaint must state that it is a corporation, or state facts showing that it is an artificial being, capable of being sued. *Id.*

Plaintiff's corporate existence is not put in issue by defendant's averment that he had no knowledge or information sufficient to enable him to form a belief, and, therefore, denies plaintiff's corporate existence. *N. W. Cordage Co. v. Galbraith*, 70 N. W. Rep. 1048.

A denial of corporate existence on information and belief is insufficient under above section. *Stoddard Mfg. Co. v. Mattice*, 72 N. W. Rep. 891.

Evidence held insufficient to charge plaintiff with knowledge of the incorporation of the defendant. *Rust-Owen Lumber Co. v. Wellman*, 72 N. W. Rep. 891.]

§ 2909. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

As to corporate stock, see §§ 2912-2918. Personal liability of stockholder. § 2933. Certificates of stock, § 2915.

[Rights and duties of stockholders holding a majority of subscribed capital stock. *Hennessey v. Griggs*, 1 N. Dak. 52; s. c., 44 N. W. Rep. 1010.

§ 2910. The shares of stock of an estate of a minor, or insane person, may, at all elections and meetings of a corporation, be represented by his guardian, and of a deceased person by his executor or administrator.

§ 2911. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent, or attorney, in the same manner as if she were a feme sole; and any proxy or power given her, touching any shares of stock of any corporation owned by her, is valid and binding the same as if she were unmarried.

ARTICLE II. CORPORATE STOCK.

Sec. 2912. Subscriptions to stock may be enforced. 2913. Books to be open for subscriptions to stock.

2914. Stock forfeited for non-payment, or payment enforced.

2915. Stock is negotiable.

2916. Excess of stock void.

2917. Corporation may own its own stock.

2918. Dividends belong to whom.

§ 2912. A subscription to the stock of a corporation about to be formed, is to be held

for the benefit of the corporation when it is formed, and may be enforced by it.

§ 2913. After the secretary of the territory issues the certificate of incorporation as provided in section 2905, article 1, of this chapter, the directors named in the articles of incorporation must proceed in the manner specified or provided in their by-laws; or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital, and to levy assessments and installments thereon, and to collect the same as in article 6 of this chapter, assessments of stock are provided to be made.

Fraud in subscriptions to stock, penalty. § 6841. In procuring organization. §§ 6842, 6843.

[Condition of subscription contract that 500 shares should be subscribed, held not performed. *Johnson v. Schar*, 70 N. W. Rep. 838.

Payment under subscription contract without knowledge of breach is not a waiver. *Id.*]

§ 2914. When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both.

§ 2915. All corporations for profit must issue certificates of stock fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

Capital stock is personal property for purpose of taxation. See Revenue Act of 1891, at p. 30. Certificates limited to amount of stock. § 2916. Corporation may purchase its own stock. § 2917. Assessments on stock. §§ 2943-2963. Issuance of spurious certificates, penalty. §§ 6760, 6761.

§ 2916. A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

§ 2917. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock, from its surplus profits, or as provided in the article on

assessments of stock, or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimously decide upon.

[Question of fraud as to creditors on part of corporation by purchasing its own stock, borrowing money for such purpose without authority and confessing judgment therefor. *A. & W. Co. v. Deyette*, 59 N. W. Rep. 214.]

§ 2918. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

Dividends only from surplus profits. § 2928.

ARTICLE III. CORPORATE POWERS.

- Sec. 2919. Powers of corporations.
 2920. By-laws adopted by whom.
 2921. What the by-laws may provide.
 2922. By-laws must be certified and recorded; repeal of by-laws.
 2923. Election of directors.
 2924. Same.
 2925. Same.
 2926. Number of directors and their powers.
 2927. Directors to organize and elect officers.
 2928. Dividends and debts; Statute of Limitations; false representations.
 2929. False representations of officers.
 2930. Removal of directors.
 2931. Quorum of stockholders; proxies.
 2932. Election failing; place of meeting; power of justice of the peace.
 2933. Individual liability of stockholders for debts.
 2934. Uncalled meeting is valid, when.
 2935. Transfer of non-resident stock.
 2936. Change in amount of capital stock.

§ 2919. Every corporation, as such, has power:

1. To have succession by its corporate name, for the period limited; and when no period is limited, perpetually.

See § 2889. Corporate name required. § 2893. And must be stated in articles. § 2902.

2. To sue and be sued; to complain and defend in any court.

Service of summons on a corporation. § 4898. On a foreign corporation. § 4900. Must keep resident agent for service. § 3192. Service in criminal proceedings. §§ 7579-7581. Limitation of actions. § 4868. Costs. § 5207. Actions by State. §§ 5345-5360. Incorporation cannot be attacked collaterally. § 2892. Copy of articles prima facie evidence. § 2907. Franchise may be sold to satisfy judgment. §§ 2964-2969. Injunction not to be allowed, when. § 4990. Not necessary to prove corporate existence. § 2908. Attachment. §§ 4993-5008.

[When a defendant is sued by a name, indicating that it is not a natural person, but a company of some kind, complaint must state that it is a corporation, or facts showing it to be an artificial being capable of being sued. *State v. Ry. Co.*, 4 S. Dak. 261; s. c., 56 N. W. Rep. 894.

Failure to allege in complaint that defendant is a corporation may be taken advantage of by general demurrer. *Id.*

Proceedings supplementary to execution are available against a corporation. *Mfg. Co. v. Ins. Co.*, 4 S. Dak. 173; s. c., 56 N. W. Rep. 98.

The knowledge of the principal promoter and organizer of a corporation, who acquires his knowledge as such and who, upon its organization, becomes its manager, is the knowledge of the corporation. *Huron, etc., Co. v. Kittleson*, 4 S. Dak. 520; s. c., 55 N. W. Rep. 759.]

3. To make and use a common seal, and alter the same at pleasure.

See § 3548.

4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding, in any case, any amount limited by law.

Corporation cannot take under a will. § 3309.

5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

Employee making false entries, penalty. § 6770.

6. To make by-laws not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

By-laws may provide for issuing certificates. § 2915. Adopted by whom. § 2920. To provide for what. § 2921. Book of, to be kept. § 2922.

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments.

Assessment of stock. §§ 2913-2963.

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

Combinations and trusts prohibited. See Act of 1890, at p. 27.

[A corporation cannot lawfully contract, or be compelled to perform a contract, which law of its creation expressly forbids. *Tolman v. Mica Co.*, 4 Dak. 4; s. c., 22 N. W. Rep. 595.

The adoption by a corporation of an agreement made by its promoter may be implied from the acts of the corporation without any express acceptance. *Huron, etc., Co. v. Kittleson*, 4 S. Dak. 520; s. c., 55 N. W. Rep. 759.]

In addition to the above enumerated powers, and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

§ 2020. Every corporation formed under this chapter must, within one month after filing articles of incorporation, adopt a code or by-laws for its government not inconsistent with the laws of the United States or of this territory. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, or if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

See § 2032.

§ 2021. A corporation may, by its by-laws, where no other provision is specially made, provide:

1. The time, place and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time for the annual election for directors, and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than directors; and
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

[Presumption, in absence of evidence, that by-laws of corporation silent as to official compensation of officer are equally silent as to scope and character of his official duties. *Edwards v. Ry. Co.*, 4 Dak. 549; s. c., 33 N. W. Rep. 100.]

§ 2022. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as "the book of by-laws," and no by-laws shall take effect until so copied, and the books shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws

and to adopt new by-laws may, by a similar vote at any such meeting, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated, the repeal shall not take effect.

See §§ 2020, 2021.

§ 2023. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined, as provided in section 2020.

See Const., art. XVII, § 5. Guardians, executors, etc., may vote. § 2010. And married women. § 2011. Removal of director. § 2030. "Director" defined. § 6862.

[Legality of election of directors de facto cannot be inquired into collaterally, without showing that a judgment obtained in a direct proceeding instituted by the State forbidding the corporation to exercise its franchises within the State. *Wright v. Lee*, 2 S. Dak. 596; s. c., 51 N. W. Rep. 706.

Directors elected at meeting of stockholders held without limitations of State granting the charter are directors de facto. Id.]

§ 2024. At the first meeting at which by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected to hold their offices for one year, and until their successors are elected and qualified.

See Const., art. XVII, § 5.

§ 2025. All election of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock, or of a majority of the members, is necessary to a choice. If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and also at all elections at other meetings of stockholders.

See Const., art. XVII, § 5.

§ 2026. The corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or

Organization of directors; dividends; removal — Civ. Code, §§ 2927-2931.

where there is no capital stock, then from the members of such corporation. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Election of directors. Const., art. XVII, § 5; Statutes, §§ 2923-2925. "Director" defined. § 6862. Frauds in management. §§ 6841 et seq.

[Directors are agents of the corporation, not the corporation itself. *Wright v. Lee*, 2 S. Dak. 596; s. c., 51 N. W. Rep. 706.

Although they meet without limits of State creating the corporation, yet their proceedings will be valid and binding upon it. *Id.*

Board of directors are properly qualified to make assignment of property of corporation for benefit of creditors without obtaining sanction of stockholders. *Id.*

The officers of a corporation had no power to bind it by contracts not authorized by the directors. *Des Moines, etc., Co. v. Milling Co.*, 70 N. W. Rep. 839.

One contracting with an officer of a corporation is chargeable with notice of the limit of their powers to bind the corporation. *Id.*

See note to § 2889, Laws of N. Dak.

The directors of a corporation may contract with a member of the board for an accord and satisfaction of a claim of such board. *Troy Min. Co. v. White*, 74 N. W. Rep. 236.]

§ 2927. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

Crimes by corporate officers. §§ 6760-6770.

[Secretary of a corporation may sue and recover for extraordinary services. *Edwards v. Ry. Co.*, 4 Dak. 549; s. c., 33 N. W. Rep. 100.

Officers and agents of a corporation may by their conduct bind themselves individually as partners. *Rust-Owen Lumber Co. v. Weltman*, 72 N. W. Rep. 89.]

§ 2928. The directors of corporations must not make dividends except from the surplus profit arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock, except as specifically provided by law. For a violation of the provisions of this section, the directors under whose administration the

same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Dividend belongs to whom. § 2918.

§ 2929. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

§ 2930. No directors shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it was called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 2920, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

Election of directors. §§ 2923-2925.

§ 2931. At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock or of the members, represented either in person or by proxy, in writing. Every person acting therein, in person, or by proxy, or representative, must

be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had; such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

See § 2923, cross-references.

§ 2932. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section 2930.

2. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

3. (As amended by Laws 1887.) The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business; Provided, That the meetings of the boards of directors of railway corporations having one or more directors resident in this territory, or having duly appointed an agent resident in this territory, upon whom service may be made, may be held at any place mentioned in the notice convening said board of directors, either within or without the territory. Provided, That the meetings of the boards of directors of railway corporations having one or more directors resident in this territory, upon whom service may be made, may be held at any place mentioned in the notice convening said board of directors, either within or without the territory.

4. When no provision is made in the by-laws for regular meetings of the directors

and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

5. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

[Above section construed. *Hennessy v. Griggs*, 1 N. Dak. 52.]

Under subd. 4 of above section, a meeting of corporate directors, called by verbal notice of the president, held to be legal, and the acts of the directors at such meeting binding on the corporation. *Troy Mining Co. v. White*, 74 N. W. Rep. 236.]

§ 2933. Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guar-

Transfers by nonresidents; increase or decrease of capital — Civ. Code, §§ 2934-2937.

dian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor or person, or estate represented, is to be deemed the stockholder as respects such liability.

See §§ 2912-2918.

[The capital stock of every corporation is a trust fund for payment of its debts, and its creditors have the right of priority of payment over any stockholders. *Mfg. Co. v. Ins. Co.*, 4 S. Dak. 173; s. c., 56 N. W. Rep. 98.

Judgment creditors of a corporation may sustain an action as in equity to reach and apply concealed assets or misappropriations, the same as individual debtors, but where a receiver is appointed the right to bring such action passes to him. *Id.*

Stockholders who subscribe for stock, or assist in organizing a corporation under a charter, and reap the benefits of the law, and thereby induce persons to credit the corporation and do business with it on the faith of its being legally organized, will be estopped from alleging that the law under which it was organized is unconstitutional, as a means of avoiding personal liability. *B. & L. Assn. v. Chamberlain*, 4 S. Dak. 271; s. c., 56 N. W. Rep. 897.]

§ 2934. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 2935. When the shares of stock in a corporation are owned by parties residing out of the territory, the president, secretary and directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate thereof to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, continued to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided,

neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

§ 2936. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the territory, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week for four weeks successively.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution, before it can be effected.

4. A certificate must be signed by the chairman and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the secretary of the territory, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished.

6. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

ARTICLE IV. CORPORATE RECORDS.

Sec. 2937. Record of business transactions; stock-book; publicity.

§ 2937. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who were absent; and, if requested by any director, member or stockholders, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director,

member, or stockholder to any action or proposed action, must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

2. In addition to the records above required to be kept, corporations for profit must keep a book, to be known as the "stock and transfer-book," in which must be kept a record of all the stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer-book must be kept open to the inspection of any stockholder, member, or creditor.

See §§ 6770, 6851-6854.

ARTICLE V. DISSOLUTION OF CORPORATIONS.

Sec. 2938. Dissolution of corporations.
 2939. Lapse of corporation by non-user.
 2940. Directors are trustees on dissolution.
 2941. Liability of trustees.
 2942. Revival of corporations.

§ 2938. A corporation is dissolved:

1. By the expiration of the time limited by its articles of incorporation.

2. Its involuntary dissolution as provided for in chapter 26 of the Code of Civil Procedure.

3. If voluntary, its dissolution may be affected in the following manner:

1. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

2. The application must be in writing, and must set forth: That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members; and that all claims and demands against the corporation have been satisfied and discharged.

3. The application must be signed by a majority of the board of directors, trustees, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

4. If the court is satisfied that the application is in conformity with this article, it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper pub-

lished in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county.

5. At any time before the expiration of the time of publication any person may file his objections to the application.

6. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

7. The application, notices of proof of publication, objections (if any), the declaration of dissolution, constitute the judgment-roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 2939. If a corporation does not organize and commence the transaction of business, or the construction of its works, within one year from the date of its incorporation, its corporate powers cease.

§ 2940. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

§ 2941. The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation, to the extent of its property in their hands.

§ 2942. A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE VI. ASSESSMENT OF STOCK.

Sec. 2943. Assessment may be levied, when.
 2944. Assessment limited.
 2945. New assessment can be levied, when.
 2946. Requisites of an assessment.
 2947. Form of notice.
 2948. Service of the notice.
 2949. Assessment unpaid; stock declared delinquent.
 2950. Contents of the notice.
 2951. Publication of the notice.
 2952. Effect of publication.
 2953. Sale of the stock.
 2954. Definition of the term "bidder."
 2955. Stock bid in by corporation, when.
 2956. Stock held by corporation.
 2957. Extension of notice.
 2958. Irregularities.

- Sec. 2059. Redemption of stock; action to recover.
 2060. Proof of notice.
 2061. Directors may bring action.
 2062. Interest of delinquent member of corporation may be sold.
 2063. Purchaser becomes a member of the corporation.

§ 2043. The directors of any corporation formed or existing under the laws of this territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

§ 2044. No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 2045. No assessment must be levied while any portion of a previous one remains unpaid, unless: 1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or

3. The assessment falls within the provisions of either the first, second or third subdivision of section 2044.

§ 2046. Every order levying an assessment must specify the amount thereof, when, to whom and where payable, fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order of levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 2047. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of the corporation in full. Location of principal place of business.)

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied

upon the capital stock of the corporation, payable (when, to whom and where.) Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

§ 2048. The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general laws, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a State or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

§ 2049. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

Notice.—There is delinquent upon the following-described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law, (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

§ 2050. The notice must specify every certificate of stock, the number of shares it

represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificate for such shares have not been issued must be stated.

§ 2951. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 2952. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 2953. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

§ 2954. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation, on payment of the assessment and costs.

§ 2955. If at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 2956. All purchases of its own stock made by any corporation vests the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit,

in accordance with the by-laws of the corporation, or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

§ 2957. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 2958. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must be begun anew.

§ 2959. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all delinquent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 2960. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

§ 2961. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may

Sale of franchises; examination of corporations — Civ. Code, §§ 2962-2971, 3188.

elect to waive further proceedings under this article for the collection of delinquent assessments or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

§ 2962. Whenever any member of an incorporated company, organized under articles 10, 12 and 13* of this chapter, duly organized under the laws of this territory, where the same is not a stock company, shall refuse, fail or neglect to pay any assessment levied by the company of which he is a member, in accordance with law, after having been notified of such assessment as provided in said chapter, his share, interest or membership in such company may be sold in the same manner and like proceedings had as in the sale of the stock of incorporated companies, under said chapter, and the title to such share, interest or membership when so sold shall vest absolutely in the purchaser thereof.

§ 2963. Any member of an incorporated company, not being a stock company, may, by deed, transfer his interest, share or membership therein, whereupon the purchaser thereof shall become a member of such company; and if any assessment or amount of money shall at the time be due and unpaid thereon, such share, interest or membership may be sold, as in other cases, if such assessment or amount remains unpaid, after said purchaser has due notice of such delinquency.

ARTICLE VII. JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

Sec. 2964. Corporate franchise may be sold.

2965. Certificate of sale.

2966. Rights of the purchaser.

2967. Other powers remain.

2968. Corporation may redeem its franchise

2969. Sale must take place, when.

§ 2964. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise, and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner and with the same effect as any other property, but without any exemption.

§ 2965. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

§ 2966. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property

thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 2967. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures as before such sale.

§ 2968. The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with twelve per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 2969. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated.

ARTICLE VIII. EXAMINATION OF CORPORATIONS, ETC.

Sec. 2970. Legislature may examine into corporations.

2971. Power reserved.

§ 2970. The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this territory at all times; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any district court or any judge thereof, under such rules and regulations as the court may prescribe.

§ 2971. The legislative assembly may at any time amend this chapter or any article or section thereof.

ARTICLE XVIII. EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

Sec. 3188. Proceedings for continuance of existing corporations.

§ 3188. Any corporation existing at the passage of this act, formed under the laws of this territory, may elect to continue its

*Wagon roads, mining and manufacturing companies, and bridge corporations.

Unincorporated associations; foreign corporations — Civ. Code, §§ 3189-3192.

existence under the provisions of this chapter applicable thereto, and it may, at any time thereafter, make such choice or election, at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock, or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is so made, signed by the chairman and secretary of the meeting, and a majority of the directors and trustees, must be filed in the office of the secretary of the territory, and thereafter the corporation shall continue its existence under the provisions of this chapter which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

See Const., art. XVII, §§ 2, 3.

ARTICLE XIX. UNINCORPORATED ASSOCIATIONS.

Sec. 3189. Held strictly to the law.

§ 3189. Any person or persons, or association of persons now engaged in or that may hereafter engage in the construction of any street railway, toll road, ditch for conveying water, or any other works or improvements specified in chapter 3, (title 2, part 3, division second, Civil Code), shall be required to comply strictly with all the provisions of said chapter in the same manner as therein provided for incorporated companies, so far as the same can be done; and upon failure of any such person or persons, or association of persons, to comply as aforesaid, the same shall work a forfeiture of any and all rights he or they may have acquired in accordance with law.

ARTICLE XX. DUTIES OF FOREIGN CORPORATIONS.

Sec. 3190. Foreign corporations must file charter.

3191. Record.

3192. Resident agent to accept service.

§ 3190. (As amended March 14, 1895.) No corporation created or organized under the laws of any other State or territory shall transact any business within this State or acquire, hold and dispose of property, real, personal or mixed within this State, or sue or maintain any action at law or otherwise, in any of the courts of this State, until such corporation shall have filed in the office of

the secretary of State a duly authenticated copy of its charter or articles of incorporation, or shall have complied with the provisions of this act. Provided, That the provisions of this act shall not apply to corporations and associations created for religious and charitable purposes only.

See Const., art. XVII, § 6. Penal offenses by foreign corporation. § 6861. See note to § 3261, Laws of North Dakota.

[Acts of foreign corporation, which has not complied with requirements of Constitution and laws of this State, are not void and unenforceable, but such foreign corporation may, in direct proceeding instituted by the State, be prevented from executing its franchises within the State until it has fully complied with Constitution. *Wright v. Lee*, 2 S. Dak. 596; s. c., 51 N. W. Rep. 706.

Acceptance of notes by a foreign corporation in settlement for sales of merchandise made in its own State, is not such a transaction as is inhibited by above section. *Mfg. Co. v. Foster*, 4 Dak. 329; s. c., 30 N. W. Rep. 166.

Foreign corporations, like other non-residents, are allowed to sue upon furnishing security for costs; their capacity to sue is not affected by inhibition contained in §§ 3190-3192, which extends only to the ordinary transaction of business. *Id.*; *Mach. Co. v. Moore*, 2 Dak. 281; s. c., 8 N. W. Rep. 131.

Foreign corporation plaintiff need not allege in complaint that it has filed copy of its articles and appointed agent for process; complaint without such allegation held sufficient. *Id.* Defense that foreign corporation has no authority to sue must be raised by answer, not by demurrer. *Id.*; *Lumber Co. v. Keefe*, 6 Dak. 160; s. c., 41 N. W. Rep. 742.

An attachment may be maintained by a foreign corporation, though it does not appear that it has filed its articles of incorporation, or appointed a resident agent. *Mfg. Co. v. Groves*, 62 N. W. Rep. 109.

The question of the right of a duly organized foreign corporation to do business in this State without having complied with above statute cannot be raised or determined collaterally; it must be raised by the State in a direct proceeding. *Wright v. Lee*, 4 S. Dak. 237; s. c., 55 N. W. Rep. 931. Until its authority is challenged by the State, such a corporation is a corporation de facto. *Id.*

An attachment at the suit of a non-resident corporation, which has not complied with this law, would be dissolved. *Bradley v. Armstrong*, 68 N. W. Rep. 733.

In an action by a foreign corporation on a note made and payable in the State, it is unnecessary to allege compliance with the laws prescribing conditions for doing business in the State. *Aene Mercantile Agency v. Rochford*, 72 N. W. Rep. 46. Failure to comply with above requirement must be taken advantage of by answer. *Id.*

§ 3191. Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this territory for that purpose.

§ 3192. (As amended March 14, 1895.) Such corporations shall appoint an agent who shall reside at some accessible point in this State, duly authorized to accept service of process and upon whom such service of process may be had in an action in which said corporation may be a party and service upon such agent shall be taken and held as due and personal service upon such corporation. A duly authenticated copy of the appointment of said agent shall be filed

Actions; limitation; service, etc.—Civ. Code, §§ 3309, 3548; Code Civ. Pro., §§ 4868, 4898

and recorded in the office of the secretary of State and register of deeds of the county where such agent resides, and a certified copy thereof by the secretary of State or register of deeds shall be conclusive evidence of the appointment and authority of such agent. Provided, That no action shall be commenced or maintained in any of the courts of this State by such corporation on any contract, agreement or transaction made or entered into in this State, by such corporation, unless such corporation shall have fully complied with the provisions of this act. Provided, further, That it shall be unlawful for any person to act within this State as agent or officer of any foreign corporation unless such corporation shall have appointed an agent as hereinbefore provided, and every person so acting as such agent or officer of any such corporation shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars and imprisonment in the county jail not less than ten nor more than thirty days or both such fine and imprisonment at the discretion of the court. That justices of the peace shall have concurrent jurisdiction with the circuit court to hear and determine any criminal action arising under the provisions of this act.

See § 3190, cross-references.

[Sections 3190, 3192 do not render contracts entered into with foreign corporations before compliance with terms of said sections, unenforceable and void. *Mill Co. v. Bartlett*, 3 N. Dak. 138; s. c., 54 N. W. Rep. 544.

Parties who have contracted with such foreign corporation as a corporation, and received and retained benefits of such contract, cannot raise the question of non-compliance with terms of said sections. *Id.* Service of summons upon a managing agent of a foreign corporation is sufficient, though such corporation had never filed a certificate of appointment of such managing agent. *Foster v. Lumber Co.*, 58 N. W. Rep. 9.]

Part IV. Acquisition of Property.

TITLE V. WILL.

CHAPTER I.

Execution and Revocation of Will.

Sec. 3309. May be made to any one capable.

§ 3309. * * * No corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

Power to corporation to take property. § 2919.

DIVISION THIRD. OBLIGATIONS.

Part II. Contracts.

TITLE II. MANNER OF CREATING CONTRACTS.

Sec. 3548. Seal affixed, how.

§ 3548. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

Corporate seal. § 2919.

CODE OF CIVIL PROCEDURE.

Part II. Civil Actions.

CHAPTER VI.

Time of Commencing Actions.

ARTICLE IV. GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

Sec. 4868. Does not affect moneyed corporations in certain cases.

§ 4868. This chapter shall not affect actions against directors or stockholders of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

See § 2919, subd. 2, cross-references.

CHAPTER IX.

Manner of Commencing Civil Actions.

Sec. 4892. Civil actions commenced by summons.
4898. Summons shall be served, how.
4900. Service of summons by publication.

§ 4892. Civil actions in the courts of this territory shall be commenced by the service of a summons.

§ 4898. The summons shall be served by delivering a copy thereof, as follows:

1. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, treasurer, a director, or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property in this territory, or the cause of action arose therein, or when such service shall be made within this territory personally upon the president, treasurer, secretary, or duly authorized agent thereof.

Service of summons; attachments — Code Civ. Pro., §§ 4900, 4921, 4922, 4990, 4993, 4995.

2. (As amended Laws 1895, chap. 68.) In an action against a railroad corporation, or against a person, firm or corporation operating elevators and warehouses in the state wherein and whereat grain is purchased, received or handled, in addition to the service provided in subdivisions 1 and 6 of this section, to any acting ticket, station or freight agent of such railroad company or to any acting agent in charge of any elevator or warehouse operated by such person, firm or corporation, in the county or subdivision where the action or proceeding is commenced.

See § 2919, subd. 2; § 3192.

[Service of summons upon a managing agent of a foreign corporation is sufficient, though such corporation had never filed a certificate of appointment of such managing agent. *Foster v. Lumber Co.*, 58 N. W. Rep. 9. One who has full charge of the business of a foreign corporation, and who is not subject to another authority within the State, is the managing agent of such corporation. *Id.*]

§ 4900. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the territory, and that fact appears by affidavit to the satisfaction of the court or a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this territory, such court or judge may grant an order that the service be made by the publication of a summons in either of the following cases:

1. Where the defendant is a foreign corporation, has property within the territory, or the cause of action arose therein.

* * * * *

See § 2919, subd. 2, cross-references. Foreign corporations, suits against. §§ 3190-3192.

CHAPTER X.

Pleadings in Civil Actions.

ARTICLE V. GENERAL RULES OF PLEADING.

Sec. 4921. Pleadings subscribed and verified.
4922. Verification must be what.

§ 4921. Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

§ 4922. * * * When a corporation is a party the verification may be made by any officer thereof; * * *

CHAPTER XI.

Provisional Remedies.

ARTICLE III. INJUNCTION.

Sec. 4990. Injunction against a corporation.

§ 4990. An injunction to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor, to the proper officer of the corporation, except when the territory is a party to the proceeding.

See § 2919, subd. 2, cross-references.

ARTICLE IV. ATTACHMENT.

4993. Property of non-resident corporation may be attached.

4995. Affidavit for attachment.

5003. Stocks and corporate interests.

5004. Property incapable of actual delivery.

5005. Certificate of defendant; interest in stocks and shares.

5008. Delivery of property to defendant on judgment in his favor.

§ 4993. (As amended March 4, 1895.) In all actions against a corporation created by or under the laws of any other territory, State, government or country, which has not complied with the laws of this State relative to the appointment of agents upon whom service of process may be made, or against a defendant who is not a resident of this State, or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of, secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors, as hereinafter mentioned, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the plaintiff may recover, and for the purposes of this section an action shall be deemed commenced when the summons is issued; Provided, however, That personal service of such summons shall be made, or publication thereof commenced within thirty days.

§ 4995. The warrant may issue upon affidavit, stating:

1. That a cause of action exists against such defendant, specifying the amount of the claim and the grounds thereof; and,

2. That the defendant is either a foreign corporation, or not a resident of this territory, * * *

4. That such corporation or person has removed, or is about to remove, any of his or its property from the territory with intent to defraud his or its creditors; or,

* * * * *

Attachments; actions against corporations — Code Civ. Pro., §§ 5003-5008, 5207, 5345, 5346.

§ 5003. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in this territory of such defendant, shall be liable to be attached and levied upon, and sold to satisfy the judgment and execution.

§ 5004. The execution of the attachment upon any such rights, shares, or any debts, or other property, incapable of manual delivery to the sheriff, must be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or the secretary, cashier, or managing agent thereof, or with the debtor or individual holding or occupying such property, with a notice showing the property levied on. * * *

§ 5005. Whenever the sheriff shall, with a warrant of attachment or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching or levying upon such property, such officer, debtor, or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation or individual, for the benefit of or debt owing to the defendant. If such officer, debtor or individual refuse to do so, or if it be made to appear by affidavit or otherwise to the satisfaction of the court or judge thereof, that there is reason to suspect that any certificate given by him is untrue, or that it fails to fully set forth the facts required to be shown thereby, he may be required by the court or judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

§ 5008. If the foreign corporation, or absent, or absconding or concealed defendant, recover judgment against the plaintiff in such action, any bond taken by the sheriff, except such as are mentioned in the last section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant, or his agent, on request, and the warrant shall be discharged, and the property released therefrom.

CHAPTER XV.

Of the Costs and Disbursements in Civil Actions.

Sec. 5207. Plaintiff non-resident; security for costs.

§ 5207. In cases in which the plaintiff is a non-resident of the territory or a foreign corporation, before commencing such action,* the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of

the county or subdivision where the action is to be brought, and must be approved by the clerk. His obligation shall be complete by simply indorsing the summons, or signing his name on the complaint as security for costs.

See § 2919, subd. 2, cross-references.

CHAPTER XXVI.

Actions in Place of Scire Facias, Quo Warranto and of Information in the Nature of Quo Warranto.

Sec. 5345. Civil actions in place of scire facias, quo warranto, etc.

5346. Action by the territory against a corporation.

5347. Leave to bring action.

5348. Action by territory against person usurping office, or officer doing illegal act.

5349. Person joined with territory.

5357. Judgment against corporation.

5358. Costs collected, how.

5359. Closing up corporate affairs.

5360. Judgment filed with secretary of the territory.

§ 5345. The remedies formerly attainable by the writ of scire facias, the writ of quo warranto, and the proceedings by information in the nature of quo warranto, may be obtained by civil actions under the provisions of this chapter.

§ 5346. An action may be brought by any district attorney in the name of the territory, on leave granted by the district court, or judge thereof, for the purpose of vacating the charter or the articles of incorporation, or for annulling the existence of a corporation other than municipal, whenever such corporation shall:

1. Offend against any of the laws creating, altering or renewing such corporation; or,

2. Violating the provisions of any law, by which such corporation shall have forfeited its charter or articles of incorporation, by abuse of its power; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law.

And it shall be the duty of any district attorney, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the territory against the costs and expenses to be incurred thereby.

Corporate existence cannot be attacked collaterally. § 2892.

*Any civil action.

[Proper parties in an action to vacate a charter or annul the existence of a corporation. State v. Inv. Co., 63 N. W. Rep. 232.]

Sections 5345 and 5346 were not repeated by the adoption of the State Constitution. Wright v. Lee, 4 S. Dak. 237; s. c., 55 N. W. Rep. 931.

The action provided for in above section is available against a foreign corporation. "Annuling the existence of a corporation" must be taken to mean, in respect to a foreign corporation, annulling its existence and life within limits of the State. *Id.*]

§ 5347. Leave to bring the action may be granted upon the application of any district attorney; and the court or judge may, at discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

§ 5348. An action may be brought by any district attorney in the name of the territory, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any * * * franchise within this territory, or any office in a corporation created by the authority of this territory; or,

2. When any association or number of persons shall act within this territory as a corporation, without being duly incorporated.

§ 5349. When an action shall be brought by the district attorney by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the territory as plaintiff. And in every such

case the district attorney may require, as a condition for bringing such action, that satisfactory security shall be given to indemnify the territory against costs and expenses to be incurred thereby.

§ 5357. If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

§ 5358. If judgment be rendered in such action against a corporation, or against a person claiming to be a corporation, the court may cause the costs therein to be collected by execution against the person claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

§ 5359. When such judgment shall be rendered against a corporation the court has power to restrain the corporation, to appoint a receiver of its property, and to take an account and make distribution thereof among its creditors; and the district attorney must, immediately after the rendition of such judgment, institute proceedings for that purpose.

§ 5360. Upon the rendition of such judgment against a corporation, the district attorney must cause a copy of the judgment to be forthwith filed in the office of the secretary of the territory, whose duty it shall be to record the same.

PENAL CODE.

CHAPTER XLIII.

Forgery and Counterfeiting.

- Sec. 6760. Issuing spurious certificate of stock.
6761. Reissuing cancelled certificates of stock.
6762. False evidence of debt of corporation.
6763. Making false entries in corporate book.
6770. Employee of corporations making false entries.

§ 6760. Every officer, and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other State, government or country, who, within this territory, wilfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who wilfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate

or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

§ 6761. Every officer, and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other State, government or country, who, within this territory, wilfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or cancelled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of any interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

Embezzlement; fraudulent insolvencies — Pen. Code, §§ 6762, 6769, 6770, 6797, 6841-6843.

§ 6762. Every officer, and every agent of any corporation, municipal or otherwise, of any joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other State, government or country, who, within this territory, wilfully signs or procures to be signed with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or who wilfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

§ 6769. Every person who with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this territory, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the third degree.

§ 6770. Every person who, being a member or officer, or in the employment of any corporation, association, or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association, or partnership, or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree.

CHAPTER XLV.

Embezzlement.

Sec. 6797. When officer of corporation guilty of embezzlement.

§ 6797. If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

CHAPTER LII.

Fraudulent Insolvencies by Corporations, and Other Frauds in Their Management.

- Sec. 6841. Fraud in subscription for stock.
 6842. Fraud in procuring organization of stock company.
 6843. Unauthorized use of names.
 6851. Omitting to enter receipt.
 6852. Destroying or falsifying books.
 6853. Publishing false reports of corporations.
 6854. Refusing to permit inspection of books.
 6855. Insolvency deemed fraudulent.
 6856. How punishable.
 6857. Violation of duty by officer of corporation.
 6858. Director presumed to have knowledge.
 6859. Directors presumed to have assented, when.
 6860. Same, when director was absent from meeting.
 6861. Foreign corporations.
 6862. Director defined.

§ 6841. Every person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 6842. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

§ 6843. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 6851. Every director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the

books or accounts of such corporation or association, is guilty of a misdemeanor.

§ 6852. Every director, officer, agent or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 6853. Every director, officer or agent of any corporation or joint-stock association, who knowingly concurs in making, or publishes any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in sections 6842 and 6843, or wilfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

§ 6854. Every officer or agent of any corporation having or keeping an office within this territory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 6855. Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 6856. In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this Code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

§ 6857. Every director of any moneyed

corporation who wilfully does any act, as such director, which is expressly forbidden by law, or wilfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this Code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 6858. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter.

§ 6859. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 6860. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause, or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 6861. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another State, government or country, if it was one carrying on business, or keeping an officer thereof, within this territory, the record or minutes of the proceedings of the corporation.

§ 6862. The term director, as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law.

Powers and duties of directors. § 2926. Election of. §§ 2923-2925.

CODE OF CRIMINAL PROCEDURE.

TITLE XI. MISCELLANEOUS PROCEEDINGS.

CHAPTER V.

Corporations — Criminal Actions Against.

- Sec. 7579. Summons for corporation.
 7580. Form of such summons.
 7581. When and how served.
 7582. Examination of charge.
 7583. Certificate of magistrate.
 7584. Grand jury may proceed for indictment.
 7585. Appearance and plea.
 7586. Fine collected, how.

§ 7579. Upon a presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the charge. The time to be not less than ten days after the issuing of the summons.

§ 7580. The summons must be in substantially the following form:

County of.....

In the name of the territory of Dakota.

To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon the information of A. B., or the presentment of the grand jury of the county of for (designating the offense generally).

Dated at the city, or town of, the day of, 18...

G. H.,

Justice of the peace (or as the case may be).

§ 7581. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

§ 7582. At the time appointed in the summons, the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 7583. After hearing the proofs the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate in the same manner prescribed in section 7187.

§ 7584. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

§ 7585. If an indictment be found, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon, as in other cases.

§ 7586. When a fine is imposed upon a corporation, on conviction it may be collected, by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution.

LEGISLATIVE ACTS OF SOUTH DAKOTA, RELATING TO CORPORATIONS,
PASSED SUBSEQUENTLY TO 1887.

1. To declare certain combinations, agreements or trusts unlawful.
2. For the relief of corporations organized defectively under general laws.
3. Revenue and taxation.
4. To provide for the amendment of articles of Incorporation.

Act 1.

AN ACT to declare certain combinations, agreements or trusts unlawful, and to restrain and punish the same.

Be it enacted by the legislature of the State of South Dakota:

Section 1. That any combination, agreement or trust, made, entered into or formed between persons, co-partnerships, or corporations in this State, or by and between any persons, co-partnership or corporations within this State with any person, co-

partnership or corporations without this State, with intent and which shall in any manner tend to prevent a free, fair and full competition in the production, manufacture or sale of any article or commodity of domestic growth, use or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production or manufacture beyond the reasonable cost of production or manufacture thereof, or that tends to advance the price to the user, purchaser or consumer of farm machinery, implements, tools, supplies, and lumber, wood and coal, imported into this State from any other State, territory or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural

products for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement or trust did not exist, or tends to, or shall increase, enhance or maintain, rates of interest on loans of money, for the forbearance of the payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy and unlawful and void, and any person or persons who shall be a party to any such unlawful combination, agreement or trust, or who shall in any way assist, aid or abet any such combination, agreement or trust, either as principal, agent, attorney, employe or otherwise, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or imprisonment in the State's prison not exceeding three years, or both such fine and imprisonment at (the) discretion of the court.

§ 2. Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this State, any of the articles, commodities, products or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of, or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident manufacturer or wholesale dealer, refuses to sell at wholesale or manufacturers' prices, such farm implements, tools or supplies, as are furnished to such agent for sale in this State, to responsible and reputable wholesale or retail dealers in this State shall be deemed to have unlawfully combined and agreed within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free and fair competition in the sale in this State, of any such farm machinery, implements, tools or supplies furnished to such agent as aforesaid, and refused to be sold to wholesale or retail dealers in this State as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, as production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this State as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or an imprisonment in the State's prison not more than five years, or both such fine and imprisonment at the discretion of the court.

§ 3. Any non-resident corporation, co-partnership or company, or person, who shall

ship or bring into this State for sale any of the commodities, products, or goods, wares or merchandise, machinery, tools or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed and controlled in the sale of such goods by such non-resident corporations, co-partnership, company or person, in violation of the spirit, intent and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this State from selling or disposing of any such commodities, products, goods, wares or merchandise, machinery, tools, implements, or having the same sold in this State until the defendant in such order offer the same for sale, or to be sold, on like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this State, without regard to location, who may desire to purchase the same or any portion thereof, for sale again. The order of injunction mentioned in this section may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to whom application is made that the person or persons, or co-partnership or corporation named as defendant in the application and affidavit for an order of injunction has violated some provision of this act. The order of injunction issued upon such affidavits may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, or his agent or attorney, such order of injunction may be served on any or all persons in this State having in possession and for sale, or in his possession for the use, or subject to the order or direction of the defendant or defendants in such proceeding, any of said articles or commodities or goods, wares and merchandise mentioned in section one of this act, the sale of which is restrained by this order. On the final hearing by the court if the application for injunction be sustained by the court, the court shall be rendered (render) judgment against the defendant in such proceeding and in favor of the plaintiff therein for all the costs incurred by the plaintiff therein, including such attorney's fee allowed by the court therein. Any judge of a circuit court or of the supreme court may in like manner enjoin and restrain any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act from continuing such manufacturing or wholesale or retail business in this State, and all final restraining orders may be perpetual or for such period, and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relative to applications for and granting orders of injunction in this State shall apply to proceedings under the pro-

Trusts and combinations; cure of defects — Acts, March 7 and 8, 1890.

visions of this act, so far as the same are not different from, or in conflict with the provisions of this act.

§ 4. (As amended March 6, 1893.) It is hereby made the special duty of each and every State's attorney of each and every county in this State, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in his county, or upon affidavit of two or more reputable persons made and delivered to him showing or stating affirmatively that any person or persons in his county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons, and to prosecute him or them diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunction or restraining order as provided in this act: Provided, That the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant and proceed the same as though the State's attorney had made the complaint, and the (court) may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein, and such attorney's fee in any such action as the court may allow to such attorney shall be deemed a part of the costs of prosecution as mentioned in section one of this act. And, provided further, That any person or persons who may suffer damage by reason of the operation of any such pool, trust or combination defined in section one of this act or any pool, trust or combination formed without, but holding property within the State, may maintain an action therefor, and may recover the amount of damage sustained; and any person or persons who in good faith may have contributed any funds, or property, as a donation or otherwise, for location, building, or carrying on any milling, or manufacturing, or other industry in this State, or any stockholder in any corporation or company formed for the purpose of carrying on and operating any such industry which milling, manufacturing or other industry may thereafter become the property of, or controlled by any such pool, trust or combination, without the consent of such person or stockholder, may maintain an action and recover against such pool, trust or combination, or individuals composing the same, judgment for the amount so contributed or invested in stock as the case may be, and the property including the plant and all buildings, machinery and other property so owned or controlled by such trusts or combinations shall be liable to attachment and execution in such action, and may be sold to satisfy any judgment recovered therein;

and the court in which such action is pending may appoint a receiver to take charge of such property and receive all rents, issues (issues) and profits therefrom, in addition to such other powers as are now conferred by law upon receivers, and immediately after the sale of such property and confirmation thereof by the court, the purchaser shall be let into possession of such property; and in case of a surplus after satisfying such judgment or judgments, the same shall be paid over to the clerk of the court in which such action is pending, and shall be liable thereafter to the same extent as the property sold was liable, and if such surplus shall remain in the hands of said clerk, and no proceedings instituted to recover the same, or any portion thereof, for three years thereafter, the same, or such portion thereof, then remaining in the hands of said clerk, shall be paid over to the county treasurer of the county where such property shall be held or located and be credited to the school fund of the district or township in which such property is held or located, and shall be paid out by said county treasurer in like manner as though other funds belonging to such district or township.

§ 5. It shall be the duty of the secretary of this State on the application of persons for a charter to establish any corporation, to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory the secretary is authorized to withhold such charter.

(Approved March 7, 1890.)

Act 2.

AN ACT for the relief of corporations organized under general laws.

Be it enacted by the legislature of the State of South Dakota:

Section 1. All corporations organized under general law in whose certificates or articles of incorporation there is an omission of any matter required to be therein stated, or which are defectively executed or acknowledged or in which any other informality exists, are hereby declared to be and to have been corporations from the time of filing such certificate in the same manner and to the same effect and intent as if such certificate or articles were without fault, and all such certificates or articles are hereby validated and declared to be legal and have the same force and effect as if they were free from all fault or defect.

§ 2. All corporations heretofore organized, affected by this act, shall hereafter hold their charters and exist, subject to the provisions of the Constitution of the State of South Dakota.

§ 3. All acts or parts of acts, in conflict with this act are hereby repealed.

(Approved March 8, 1890.)

Taxation — Act, March 9, 1891.

Act 3.

AN ACT prescribing the mode of making assessment and the levy and collection of taxes, and for other purposes relative thereto. (As amended by chap. 18. Laws 1893.)

Be it enacted by the legislature of the State of South Dakota:

Section 1. * * * The term "person," wherever used in this act, shall be construed to include firm, company or corporation.

§ 2. * * * The property of corporations, now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created * * * is subject to taxation; and such property or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner provided in this act.

§ 4. Personal property shall for the purpose of taxation, be construed to include * * * the capital stock of all insurance companies organized under the laws of this State; all stock in turnpikes, railroads, canals and other corporations, except national banks out of the State, owned by the inhabitants of the State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of the State * * *; all shares of stock in any bank organized, or that may be organized, under any law of the United States or of this State, * * * and all such improvements upon lands the title of which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

§ 7. Personal property shall be listed in the manner following:

First. Every person of full age and sound mind, being a resident of this State, shall list his moneys, credits, bonds or stock shares, or stock of joint or other companies (when the property of such company is not assessed in this State,) * * *

Second. He shall also list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney or on account of any other person or persons, company or corporation whatsoever; and all moneys deposited subject to his order, draft or check, and credits due from or owing to any person or persons, body corporate or politic.

Sixth. The property of corporations whose assets are in the hands of receivers, by such receiver.

Seventh. The property of a body politic or corporate, by the president or proper agent or officer thereof.

§ 8. * * * The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed in the county, town or district where the principal office or place of business of such corporation or person is located in this State;

if there be no principal office or place of business in this State where any such corporation or persons transact business, then personal property pertaining to the business of a merchant or manufacturer shall be listed in the town or district where his business is carried on.

§ 9. (Property of transportation companies, etc., where to be listed.)

§ 10. (Of gas and water companies — where listed.)

§ 11. (Of street railway companies, etc.— where listed.)

§ 15. Every person required by this act to list property, shall make out and deliver to the assessor, when required, a statement verified by oath of all the personal property in his possession or under his control, * * * but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation, which such company is required to list or return as its capital and property for taxation in this State. * * *

§ 16. It shall be the duty of the assessor to determine and fix the true and full value of all items of personal property included in such statement, and enter the same opposite such items respectively, so that when completed such statement shall truly and distinctly set forth:

Twenty-fourth. The amount and value of shares of capital stock of companies and associations not incorporated by the laws of the State.

§ 19. The president, secretary or principal accounting officer of any company or association, whether incorporated or unincorporated, except such corporations as are otherwise specifically provided for in this act, shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized and the number of shares into which said capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if they have no market value, then the actual value of the shares of the stock.

Fifth. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all real property, if any.

Seventh. The value of its personal property. The aggregate amount of the fifth, sixth and seventh items shall be deducted from the total amount of the fourth, and the remainder, if any, shall be listed as bonds or stocks under subdivision 24 of section 16 of this act, the real and personal property of each company or association shall be listed and assessed the same as other personal property, in all cases of failure or

Amendment of articles — Act, March 7, 1890.

refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain.

§ 50. (Assessment of railroad property.)

§ 61. (Telegraph and telephone companies.)

§ 65. (Express and sleeping car companies.)

§ 131. All acts and parts of acts in conflict with this act or repugnant thereto are hereby repealed.

§ 132. Whereas, The present revenue laws of the State of South Dakota are imperfect and inadequate, therefore an emergency exists, and this act shall take effect and be in force from and after the date of its passage and approval.

(Approved March 9, 1891.)

Act 4.

AN ACT providing for the amendment of articles of incorporation.

Be it enacted by the legislature of the State of South Dakota:

Section 1. That any corporation for profit organized under any general law may amend its certificate or articles of incorporation, so as to modify or enlarge its business or purposes, change the number of its directors, change its name or location within this State, increase or diminish its capital stock, or provide anything which might have been provided originally in such certificate or articles of incorporation in the manner hereinafter provided.

§ 2. Such amendment or amendments may be made at any annual meeting of the stockholders, or at any special meeting called for that purpose, by a vote of the stockholders representing a three-fourths majority of all outstanding stock, after thirty days' notice in writing, giving (given) to each stockholder, stating the time and place of such meeting, and stating the proposed amendment or amendments to the articles of corporation which will be voted on at such general or special meeting of said corporation. And such amended certificate or articles shall be signed and acknowledged before some person entitled to take acknowledgments of conveyance of real property, by a majority of the board of directors.

§ 3. When amended certificate or articles of incorporation shall be adopted, a copy thereof, with a certificate thereto affixed, signed by the president and secretary, and sealed with the corporate seal, stating the fact and date of the adoption of such amended certificate or articles, and how adopted, and that such copy is a true copy of the original amended certificate or articles, shall be filed in the office of the secretary of State and such amended certificate or articles shall take effect from the date of such filing and shall thereafter have the same force as if originally adopted.

§ 4. Any corporation which shall take the benefit of this act shall thereafter exist and hold its charter under the provisions of the Constitution of this State.

§ 5. All acts or parts of this act in conflict with this act are hereby repealed.

(Approved March 7, 1890.)

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TENNESSEE.

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SPECIAL LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO 1883.

TENNESSEE.

CONSTITUTION OF TENNESSEE—1870.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

- Sec. 20. Laws impairing the obligation of contracts prohibited.
21. Private property not to be taken without compensation.
22. Monopolies prohibited.

ARTICLE II.

Legislative Department.

- Sec. 29. Credit of county, city, etc., not to be loaned in aid of any corporation, unless, etc.
31. State not to loan credit to, or become stockholder in any corporation.
33. No State bonds shall be issued to any railroad company.

ARTICLE XI.

Miscellaneous Provisions.

- Sec. 8. Corporations shall be created only by general laws.

ARTICLE I.

Declaration of Rights.

- § 20. That no retrospective law, or law impairing the obligation of contracts, shall be made.

See §§ 1699, 1711.

[Prior to Constitution 1870, the legislature had power to grant to incorporations immunities from taxation for any length of time, and such grants constitute an inviolable contract, binding upon the State, which cannot be impaired by subsequent legislation. *State v. Butler*, 13 Lea, 400; *Memphis v. Farrington*, 8 Baxter, 541; *State v. Butler*, 86 Tenn. 614; *University v. Skidmore*, 87 Id. 155; *Memphis v. Bank*, 91 Id. 546; *Same v. Same*, Id. 547; s. c., 19 S. W. Rep. 758.

A charter of incorporation is a contract within meaning of above section. *Bank v. State*, 9 Yerg. 495.

The prohibition applies as much to contracts with the State as to those between individuals. *McCallie v. Mayor*, 3 Hend. 317.

In absence of explicit exemption, a corporation takes its franchise and privileges subject to right of the State to impose license or other taxes thereon. *Turnpike Cases*, 92 Tenn. 369; s. c., 22 S. W. Rep. 75.

Under Constitution 1834, the legislature had power to grant exemptions from taxation. Such grant constituted a binding contract on the State

which could not be impaired by subsequent legislative enactment or constitutional provision. *State v. Bank*, 95 Tenn. 221; s. c., 31 S. W. Rep. 993.]

§ 21. That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

See §§ 1854, 1999.

[What is "just compensation." See *Woodfolk v. R. R. Co.*, 2 Swan, 437; *City v. Bolton*, 9 Heisk. 508; *R. R. Co. v. Stovall*, 12 Id. 1; *Moses v. Sanford*, 11 Lea, 731; *R. R. Co. v. Love*, 3 Head, 67; *R. R. Co. v. Adams*, Id. 600; *Alloway v. Nashville*, 88 Tenn. 510; s. c., 13 S. W. Rep. 123. Private property cannot be taken for private use at all. *Anderson v. Turberville*, 6 Coldwell, 151; *Stratton Claimants v. Morris Claimants*, 89 Tenn. 501; s. c., 15 S. W. Rep. 87. Legislature is the judge of the necessity of taking private property. *Freight Co. v. Memphis*, 4 Coldwell, 420.]

§ 22. That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed.

See Acts of 1889, at p. 28; 1891, at p. 29, and 1897, at p. 33.

[A perpetual charter of incorporation is not an unlawful perpetuity. *Franklin v. Armfield*, 2 Sneed, 355. It is no defense to an action of a corporation on a note made payable to it, that its charter fails to define the period of its existence. *Mfg. Co. v. Gaskell*, 2 Lea, 743. Granting the same exclusive privilege for a term of years to a private company does not make it a monopoly. *Memphis v. Water Co.*, 5 Heisk. 529. A "monopoly" defined. Id.]

ARTICLE II.

Legislative Department.

§ 29. The general assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation.

But the credit of no county, city or town shall be given or loaned to or in aid

of any person, company, association, or corporation, except upon an election to be first held by the qualified voters of such county, city or town, and the assent of three-fourths of the votes cast at said election. Nor shall any county, city or town become a stockholder with others in any company, association or corporation, except upon a like election and the assent of a like majority. But the counties of Grainger, Hawkins, Hancock, Union, Campbell, Scott, Morgan, of the votes cast at said election. Nor Buren, White, Putnam, Overton, Jackson, Cumberland, Anderson, Henderson, Wayne, Marshall, Cocke, Coffee, Macon, and the new county herein authorized to be established out of fractions of Sumner, Macon, and Smith counties and Roane, shall be excepted out of the provisions of this section, so far that the assent of a majority of the qualified voters of either of said counties voting on the question shall be sufficient, when the credit of such county is given or loaned to any person, association or corporation; Provided, That the exception of the counties above named shall not be in force beyond the year one thousand eight hundred and eighty, and after that period they shall be subject to the three-fourths majority applicable to the other counties of the State.

[The letter and spirit of this provision is that a county shall not be a stockholder nor joint owner with any company, association or corporation in any enterprise or improvement, although it may be one in which the county may be otherwise authorized to enter. *Colburne v. R. R. Co.*, 94 Tenn. 53; s. c., 28 S. W. Rep. 298. A railroad is a corporate or a county purpose. *R. R. Co. v. County Ct.*, 2 Coldwell, 645; *Nichol v. Nashville*, 9 Humph. 252. Corporate purposes defined. *Id.* 269. Above section construed. *Shelby Co. v. Exposition*, 36 S. W. Rep. 694.]

§ 31. The credit of this State shall not be hereafter loaned or be given to or in aid of any person, association, company, corporation or municipality; nor shall the State be-

come the owner, in whole or in part, of any bank, or a stockholder with others in any association, company, corporation or municipality.

§ 33. No bonds of the State shall be issued to any railroad company which, at the time of its application for the same, shall be in default in paying the interest upon the State bonds previously loaned to it, or that shall hereafter and before such application, sell or absolutely dispose of any State bonds loaned to it, for less than par.

ARTICLE XI.

Miscellaneous Provisions.

§ 8. The legislature shall have no power * * * to pass any law granting to any individual or individuals, rights, privileges, immunities or exemptions, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. No corporation shall be created, or its powers increased or diminished by special laws; but the general assembly shall provide by general laws, for the organization of all corporations hereafter created, which laws may, at any time, be altered or repealed; and no such alteration or repeal shall interfere with, or divest, rights which have become vested.

See § 1691.

[An act creating a privilege and limiting its exercise to certain corporations is unconstitutional. *Daly v. State*, 13 Lea, 228. So, also, an act authorizing a certain corporation to issue bonds at a higher rate of interest than the legal rate. *McKinney v. Hotel Co.*, 12 Heisk. 124. An act undertaking to empower the chancery courts to create corporations, or to confer upon corporations any power not granted by a law, is unconstitutional. *Chadwell, ex parte*, 3 Baxter, 98; *Willett v. Bellville*, 11 Lea, 3; *State v. Armstrong*, 3 Sneed, 634; *Burns et al., ex parte*, 1 Tenn. Chan. Rep. 83.]

CODE OF TENNESSEE — 1884.

Part I. Of Public Rights.

TITLE I. OF PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAPTER II.

Sec. 48. "Person" includes a corporation.

§ 48. * * * The word "person" includes a corporation: * * *

["Person" includes corporation. *Daly v. State*, 13 Lea, 231; *Estell v. University*, 12 Id. 480. And, as here used, it means private corporations. *Memphis v. Laski*, 9 Heisk. 511.]

TITLE IV. OF COUNTY REVENUE.

CHAPTER I.

Of the Sources of County Revenue.

Sec. 562. Same as those of State.

§ 562. The polls, property, and privileges that are taxable or exempt from taxation, for county purposes, are the same that are taxable and exempt from taxation for State revenue.

See § 1698, and cross-references. See Revenue Acts of 1895, at p. 33.

[No statute has released or exempted county taxes from railway property. *Ry. Co. v. Wilson Co.*, 89 Tenn. 597; s. c., 15 S. W. Rep. 446. The charter exemptions from taxation are subject to collateral tax. *State v. Ins. Co.*, 95 Tenn. 203; s. c., 31 S. W. Rep. 992.]

TITLE IX. OF CORPORATIONS.

- Ch. 3. Of private corporations.
- 4. Of foreign corporations.

CHAPTER III.

Of Private Corporations.

- Art. I. General provisions.
- II. Corporations for profit.

ARTICLE I. GENERAL PROVISIONS.

- Sec. 1691. Private corporations may be formed.
- 1692. Application, how and by whom to be made.
- 1693. Application to be filed; incorporation complete; validity not to be collaterally questioned.
- 1694. Same.
- 1695. Application to amend charter or change name.
- 1696. Amendment complete, when.

- Sec. 1697. Secretary of state to publish list of corporations.
- 1698. Capital stock taxable.
- 1699. Corporate powers subject to repeal.
- 1700. Validity of contracts of.
- 1701. Registration of.
- 1702. Number of directors may be changed.
- 1703. Fees.

§ 1691. Private corporations may be formed and charters obtained by them in the manner and for the purposes hereinafter provided.

(This chapter has been amended as follows: By Laws of 1885, chap. 78, to include the organization of corporations to purchase, own, improve, use, occupy, rent, lease and enjoy real estate for profit, and to sell or otherwise convey the same; Id. chap. 115, for the purpose of establishing and constructing water-works; Id. 1887, chap. 139, to carry on the trade of merchants; Id. chap. 241, for the purposes of manufacturing, canning and packing of all kinds of vegetables, and disposing of the same; Laws of 1889, chap. 122, for raising and dealing in poultry and eggs; Id. chap. 224, prescribing the forms of charters for insurance companies; Id. chap. 230, to authorize the use of electricity by street railroad companies; Id. chap. 240, to amend the charter of all gas companies; by Laws of 1893, chap. 11, to include the organization of railroad terminal corporations; by Laws of 1895, chap. 79, for sprinkling and watering streets; Id. chap. 113, of guarantee companies; Id. chap. 208, water and electric light, heat and power companies.)

See Const., art. XI, § 8. Tax for privilege of organizing. Act of 1885, at p. 33. Charter made valid. Act of 1890, at p. 29.

§ 1692. Any five or more persons, over the age of twenty-one, desiring to form a corporation for any of the purposes in this chapter mentioned, shall copy the form of charter adapted to the purpose, filling the necessary blanks, and append to the same an application in these words: "We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation, for the purposes and with the powers declared in the foregoing instrument. Witness our hands, the . . . day of . . . 18..." (To be signed by the applicants.)

First five or more persons to constitute first board of directors. § 1706.

[A corporation established by special charter cannot avail itself of the General Incorporation act, unless it shows acceptance thereunder. *Turnpike Co. v. State*, 34 S. W. Rep. 4.]

§ 1693. The said instrument, when probated as hereinafter provided, with application, probates and certificates, is to be registered in the county where the principal office of the company is situated, and also registered in the office of the secretary of State; and a certificate of registration given by the secretary of State, under the great seal of the State, shall, when registered in the register's office of said county, with the fac simile of said seal, complete the formation of the company as a body politic; and the validity of the same in any legal proceeding shall not be collaterally questioned.

See § 1696. Proof of corporate existence. § 6224. Evidence for or against corporation. § 1714.

[The existence of a corporation cannot be collaterally questioned in any legal proceeding after its completed charter has been duly registered. *Anderson v. R. R. Co.*, 91 Tenn. 44; s. c., 17 S. W. Rep. 803.]

The principal office is located in that county where the corporators elect to have their charter first registered and perfected within the meaning of the requirements of above section. *Id.*

The charter being signed, acknowledged, and filed with the secretary of State and then finally registered, with his certificate attached, the formation of the company is complete, and its validity cannot be collaterally questioned. *Shields v. Land Co.*, 94 Tenn. 138; s. c., 28 S. W. Rep. 668.

The registration of certificates with the secretary of State, and the seal, is essential to the validity of the corporation. *Brewer v. State*, 7 Lea, 682.

At the moment when the conditions required by law as preliminary to granting charter are complied with, subscribers to stock become shareholders, with all the subsequent obligations and liabilities. *Cartwright v. Dickinson*, 88 Tenn. 482; s. c., 12 S. W. Rep. 1030.]

§ 1694. If the corporation establishes agencies in any other county, the instrument must be registered there also.

See § 1993.

[Failure to comply with above provision may subject corporation to a proceeding by the State for a forfeiture, but its corporate existence cannot be collaterally questioned after registration in the county of its principal office. *Anderson v. R. R. Co.*, 91 Tenn. 48; s. c., 17 S. W. Rep. 803.]

Subsequent opening of an office in another county, or a removal of the principal office, cannot affect the charter acquired by registration in the first county. *Id.*]

§ 1695. Any corporation which may desire to change its name, increase its capital stock, or obtain any powers granted herein, shall have the right to do so, by the board of directors of said corporation copying said amendment, and making an application in these words:

"State of Tennessee—Act of incorporation.

"We, the undersigned, comprising the board of directors of here insert the name of the corporation, apply to the State of Tennessee, by virtue of the general laws of the land, for an amendment to said charter of incorporation, for the purpose of invest-

ing said corporation with the power (here state the clause in the general law aforesaid, which is desired as an amendment, or if it be simply to change the name, so state the fact).

"Witness, our hands the day of"

(To be signed by the directors.)

See § 1711. Acts of 1893, at p. 31; and of 1897, at pp. 34, 35.

[An amendment must be registered as the original, and, until this is done, is subject to same objection which renders void a defectively registered charter. *Anderson v. R. R. Co.*, 91 Tenn. 53; *Brewer v. State*, 7 Lea, 682.]

Question whether capital stock having once been fixed by law can increase without an amendment of the charter, *quere*. *Cartwright v. Dickinson*, 88 Tenn. 487; s. c., 12 S. W. Rep. 1030.

Charters issued under the general incorporation laws may be amended by general laws adding to the powers originally granted. *Miller v. Ins. Co.*, 92 Tenn. 168; s. c., 21 S. W. Rep. 39.

The State may authorize a corporation to alter its original enterprise and exercise new franchises to any extent without impairing any contract with the corporators. *State v. Butler*, 13 Lea, 400.

Charter not void for failing to fix capital stock. *State v. Bank*, 95 Tenn. 221; s. c., 31 S. W. Rep. 993.]

§ 1696. This instrument shall be probated or acknowledged as hereinafter provided, and the certificate of registration given by the secretary of State, under the great seal of the State, shall complete the amendment to said act of incorporation, and the validity thereof shall not, in any legal proceeding, be collaterally questioned.

See § 1693. Tax for registration of. Act of 1895, at p. 33.

§ 1697. The secretary of State shall have published and bound with the acts of each general assembly, a certified list of all corporations organized under this chapter, giving the name and date of organization of each corporation, and such publication shall be legal evidence of the existence of such corporations.

Evidence of existence. § 6224.

[Such publication is only prima facie evidence of incorporation. *Brewer v. State*, 7 Lea, 682; *Tillery v. State*, 10 id. 36; *Harrison v. State*, 15 id. 720.]

§ 1698. The capital stock of any company incorporated under this charter shall be liable to taxation.

See Act of 1897, at p. 34. Foreign corporation, taxation of. § 1998. County revenue. § 562.

[It is not double taxation to assess both capital stock and shares of stock to their respective owners. *State v. Bank*, 95 Tenn. 221; s. c., 31 S. W. Rep. 993. Surplus and undivided profits of bank not exempt from taxation as capital stock. *Id.*]

Contracts; number of directors — Code, §§ 1699-1703.

§ 1699. The powers conferred on any company incorporated hereunder shall be subject to repeal or amendment at the will of the legislature.

See Const., art. I, § 20. General charter may be repealed. § 1711. May be amended. § 1865.

§ 1700. Any obligation, contract, mortgage, trust deed, agreement in writing or otherwise, heretofore made and entered into by or with any association of persons, either as an actual or pretended corporation, or as individuals, who may become a body politic and corporate, under the provisions hereof, for the payment of money or the performance of any lawful act, shall be binding upon such obligor or obligors, in favor of such body politic and corporate, just as if such obligation, contract, mortgage, trust, or agreement, had been originally made and entered into by and with such body politic and corporate, when it was legally in existence.

See Const., art. I, § 20. Want of organization no defense. § 1713.

[Against one who has contracted with a body assuming to be a corporation, it need be shown merely that it was a corporation de facto. *Marri-man v. Magliveny*, 12 Heisk. 494; *Miller v. Ins. Co.*, 92 Tenn. 182; s. c., 21 S. W. Rep. 39.]

§ 1701. Any instrument evidencing such obligation, contract, mortgage, trust deed, or agreement required by existing laws to be registered, whether registered before or after the creation of such body politic and corporate, shall be deemed, taken and considered as notice to the world, from the time of such registration, notwithstanding the fact it may have come into existence subsequent to the registration of such instrument or instruments.

Tax for registration. Act of 1895, at p. 33.

§ 1702. All private corporations may increase or diminish the number of their directors, to any number not less than five, upon the vote of the stockholders representing three-fourths of the capital stock.

Power to appoint officers. § 1704, subd. 5.

§ 1703. For their services, the secretary of State and register shall each receive a fee of three dollars, and the clerk the same fees as for probate of deed.

Tax for registration of charter. Act of 1895, at p. 33. See § 1993.

ARTICLE II. CORPORATIONS FOR PROFIT.

Sec. 1704. General powers.

1705. Restrictions upon powers.

1706. Directors; quorum of.

1707. Books of corporations shall show what.

Sec. 1708. Unpaid stock a fund for payment of corporate debts.

1709. Express and implied power.

1710. Special powers of manufacturing companies.

1711. Charter may be repealed or amended.

1711a. Corporation may establish a sinking fund.

1712. Presumption of legal incorporation.

1713. Want of legal organization, no defense.

1714. Copies of articles receivable in evidence.

1715. Stock personalty, and liable to execution.

1716. Fraud in creation of corporation, effect of.

1717. Mismanagement.

1718. Forfeiture of charter.

1719. Non-user or assignment of franchises.

1720. Continuance of corporations after explanation of charter, etc.

1721. Managers at time of dissolution are trustees.

1722. Powers and liabilities of such managers.

1723. Continuation of powers.

Mining, Quarrying, Boring and Manufacturing Companies.

Sec. 1851. Mining, quarrying and manufacturing companies.

1852. Form of charter.

1853. General powers.

1854. Power of condemnation.

1855. Annual statements to be published.

1856. Capital stock must be paid in cash; liability of directors.

1857. False statements.

1858. Personal liability of directors or stockholders.

1859. Improper dividend; directors liable.

1860. Mining companies, etc., may subscribe to railroads.

1861. And may indorse railroad bonds.

1862. And execute mortgages to secure same.

1863. Stockholders may fix time and place of meeting of directors.

1864. Power to erect elevators, etc.

1865. Amendments.

1866. These provisions apply to what corporations.

1867. Right to buy and sell patents.

1868. Power to hold realty.

1869. Annual statement.

1870. Money not to be loaned.

1871. Liability of directors.

1872. Patents as stock.

1873. Guards may be employed.

1874. Vacancies in.

§ 1704. The general powers of all corporations, chartered for purposes of individual profit, shall be —

Corporate powers subject to repeal. § 1699. Express and implied power. § 1709. See § 2001. Powers defined. Act of 1897, at p. 25. Corporation may increase the value of its shares. Act of 1889, at p. 28

[Stockholders who acquiesced in corporate acts held estopped to repudiate them. *State v. McFarland*, 35 S. W. Rep. 1007.]

1. To sue and be sued by the corporate name.

See §§ 1712-1716. Trustees on dissolution may sue. § 1721. Legal status of foreign corporation. § 1994. Venue. § 3516. Service of process, §§ 3536-3539. Chancery court, jurisdiction, §§ 5037-5039. Proof of corporate existence. § 6224,

Corporate powers — Code, §§ 1704, 1705.

and cross-references. Proceedings in name of State. §§ 4146-4168. Execution. § 3716. Embezzlement. § 5475. Foreign corporation subject to suit in this State. Act of 1887, at p. 27.

[A corporation may sue and be sued in its true name, upon a contract made with it in another name, if such true name be shown by proper averment of proof. *Bank v. Burke*, 1 Coldwell, 623; *Trustees v. Reneau*, 2 Swan, 99; *R. R. Co. v. Johnson*, 8 Baxter, 332; *State v. Smith*, 16 Lea, 666.

A corporation may be publicly known by several names, and may be sued by a name substantially answering its true appellation. *R. R. Co. v. Evans*, 6 Heisk. 609; *R. R. Co. v. Reidmohd*, 11 Lea, 205. Misnomer can only be taken advantage of by plea in abatement. *Id.*; *Maury Co. v. Lewis Co.*, 1 Swan, 239; *Young v. Iron Co.*, 85 Tenn. 202.

A corporation becoming consolidated with another and changes its name pending a suit against it, is not so dissolved, nor its original liability so extinguished, as that the pending suit abates. *R. R. Co. v. Evans*, 6 Heisk. 607; *O'Connor v. Memphis*, 6 Lea, 732.

The power to sue and be sued is incidental to every corporation at common law. *Jonesboro v. McKee*, 2 Yerger, 170.

A corporation, foreign or domestic, can sue or be sued under attachment laws of this State. *Bank v. Bank*, 4 Humph. 369.]

2. To have and use a common seal, which it may alter at pleasure; if no common seal, then the signing of the name of the corporation, by any duly authorized officer, shall be legal and binding.

See § 2478.

[When the seal of a corporation is affixed to an instrument the law presumes that it was so affixed by proper authority. *Darnell v. Dickens*, 4 Yerger, 7; *Hopkins v. Turnpike Co.*, 4 Humph. 403. And the instrument, in the absence of contradictory proof, will be regarded as an act of the corporation. *Levering v. Mayor*, 7 Humph. 533; *Memphis v. Adams*, 9 Heisk. 522.]

3. To purchase and hold, or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes.

See § 1868. Foreign corporation may hold property. § 1995. Mining corporation may mortgage. § 1862. Corporation empowered to dispose of. Act of 1887, at p. 26. Foreclosure of mortgages postponed. Act of 1891, at p. 29. Terms on which foreign may hold property. Act of 1895, at p. 32.

[A stockholder does not, by becoming owner of the entire stock of a corporation, acquire an equitable title in the corporate property. *Parker v. Hotel Co.*, 34 S. W. Rep. 209.

A contract for the sale of land entered into individually by the president of a corporation, held to have been adopted by the corporation. *Haynle v. American Trust Inv. Co.*, 39 S. W. Rep. 860.]

4. To establish by-laws, and make all rules and regulations not inconsistent with the

laws and the Constitution, deemed expedient for the management of corporate affairs.

May make regulation by by-laws for. § 1705.

5. To appoint such subordinate officers and agents, in addition to the president, secretary or treasurer, as the business of the corporation may require.

May change number of directors. § 1702. May appoint guards. § 1873.

6. To designate the name of the office, and fix the compensation of the officers.

[An agreement by stockholders to pay directors for their services held valid where the rights of creditors were not involved. *Divine v. Universal Sewing Machine Co.*, 38 S. W. Rep. 93.]

7. To borrow money, and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages, as further security for repayment of money thus borrowed.

Mining corporation may execute mortgages. § 1861. Property liable for debts. § 1996. Change bills prohibited. § 2484.

[Mortgage by a corporation to secure votes of the directors, held not to be fraudulent. *Allen v. Hotel Co.*, 95 Tenn. 480; s. c., 32 S. W. Rep. 962. Corporate bonds not void as ultra vires because pledged to secure company's debts, instead of being sold for cash to pay debts in accordance with resolution of stockholders authorizing their issuance. *Hunt v. Gaslight Co.*, 95 Tenn. 136; s. c., 31 S. W. Rep. 1006.

A corporation by the stockholders held to have ratified an invalid issuance of bonds. *Stainback v. Junk Bros., etc., Co.*, 39 S. W. Rep. 530.

In an action by the assignee of a corporation to cancel bonds, held, that a technical plea of innocent holder was unnecessary. *Id.*

The holder of corporate bonds held a bona fide holder. *Id.*]

§ 1705. The following provisions and restrictions are coupled with said grant of powers:

1. A failure to elect officers at the proper time, does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.

2. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years.

3. The corporation may, by by-laws, make regulations concerning the subscription for, or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by the subscribers for stock; the amount to be called at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the

Board of directors; stock-books; unpaid stock — Code, §§ 1706-1708.

amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

Power to establish by-laws. § 1704, subd. 4.

[Subd. 1 cited, *Bache v. Hort. Soc.*, 10 Lea, 443. Such provision as this should receive a favorable construction. *Bank v. Petway*, 3 Humph. 522. Subd. 3 does not require amount of capital stock to be stated in application for charter. *Cartwright v. Dickinson*, 88 Tenn. 480; s. c., 12 S. W. Rep. 1030. Issuance of certificates of shares is not necessary. *Id.* 482; *Young v. Iron Soc.*, 85 Tenn. 189; *State v. Butler*, 86 id. 621; *Cornick v. Richards*, 3 Lea, 1. Subscriptions to stock in addition to amount fixed by by-laws are absolutely void. *Cartwright v. Dickinson*, supra. Violation of charter no defense to suit for subscription. *Id.* Nor mistake of stockholder. *Id.* General assignment by insolvent corporation passes unpaid subscriptions. *Id.* 478. A corporation cannot reduce its capital stock by purchasing its own shares for cancellation and has no power to release one shareholder except by consent of all. *Id.* 476. Nor to declare forfeiture of shares for non-payment of calls without an express authority of statute. *Id.*

A stock company, not having express power to declare a forfeiture of stock for non-payment, may sue for amount of subscription to stock, and on failure to collect full amount subscribed, may collect by sale of stock subscribed for. *Chase v. R. R. Co.*, 5 Lea, 415.

A subscription to stock, made before charter is accepted, is not binding on subscribers, and may be withdrawn at any time before such acceptance by the company. *Gleaves v. Turnpike Co.*, 1 Sneed, 491.

Subscriptions to stock must be governed by terms and conditions of the charter. *Read v. Gas Co.*, 9 Helsk. 545.

The whole amount of stock authorized must be subscribed before a valid assessment can be made. *Id.*; *Anderson v. R. R. Co.*, 91 Tenn. 44; s. c., 17 S. W. Rep. 803.]

§ 1706. The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more corporators who shall apply for and obtain the charter.

Number of directors may be increased or diminished. § 1702. Stockholders may fix place of meeting. § 1863. Keeping false books. § 1717.

[Mortgage by a corporation to secure notes of its directors held not to be fraudulent. *Allen v. Hotel Co.*, 95 Tenn. 480; s. c., 32 S. W. Rep. 962.

An agreement by stockholders to pay directors for their services held valid where the rights of creditors were not involved. *Divine v. Universal Sewing Machine, etc., Co.*, 38 S. W. Rep. 93.]

§ 1707. The books of the corporation shall show the original or subsequent stockholders; their respective interests; the amount which has been paid on the shares sub-

scribed; the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

Entries in stock-book. § 1715. Corporate books as evidence. § 4537.

[These provisions are intended to govern conduct of company and its officers in their management of the business under their control, and apply solely as regulations upon corporate actions, but have no reference to the rights or conduct of individual stockholders. *Cornick v. Richards*, 3 Lea, 10; *Smith v. R. R. Co.*, 91 Tenn. 238; s. c., 18 S. W. Rep. 546.

When stock is assigned by a person other than one to whom issued, the duty devolves upon the corporation, when called upon to transfer the shares and issue new certificates, to inquire as to power of assignor to make the assignment. *Id.* 239; *Read v. Tel. Co.*, 93 Tenn. 490; s. c., 27 S. W. Rep. 669; *Caulkins v. Gas Light Co.*, 85 id. 606. And it must respond in damages for any injury sustained in consequence of its negligence or misconduct. *Id.* Assignment of stock by an infant is not void but voidable. *Smith v. R. R. Co.*, supra.

Stock certificate assigned to "heirs and distributees" of original stockholder by his "administrator" was presented by distributee to whom new certificate was issued. The corporation was ignorant that original stockholder had died testate, making other provision in his will. Held, that corporation was not guilty of negligence in making the reissue. It was not put upon inquiry as to a will, and its trusts. *Smith v. R. R. Co.*, 91 Tenn. 221; s. c., 18 S. W. Rep. 546. *Caulkins v. Gas Co.*, 85 Tenn. 683, distinguished. *Id.* Title of purchaser upon assignment of certificate is complete without transfer of books of corporation. *Id.* 238. And assignee for value, in due course of trade, of a certificate of stock, with a blank power of attorney to transfer stock on books of company, passes the whole title, legal and equitable. *Cherry v. Frost*, 7 Lea, 1; *Cornick v. Richards*, 3 id. 1; *Bank v. Farrington*, 13 id. 336; *Peters v. Neely*, 16 id. 282.

An action by a creditor to set aside the transfer of bank stock by his debtor as fraudulent is barred in three years. *Howell v. Thompson*, 95 Tenn. 536; s. c., 32 S. W. Rep. 309.

Transfer of stock by trust deed, by one entitled to certificates, but to whom they had not been issued, held, not to complete the transfer to the trustee, without a demand by him for the certificates. *Cates v. Baxter*, 37 S. W. Rep. 219.

A subscriber to the common stock of a corporation cannot be compelled to receive preferred stock. *Knoxville, etc., Co. v. City of Knoxville*, 37 S. W. Rep. 883.

In an action on a subscription to stock, held, that as the corporation had converted the subscriber's stock, and was unable to deliver, no recovery should be had. *Id.*

One who subscribes to original shares of stock cannot be compelled to accept shares issued to another subscriber. *Id.*

Without charter authority, a corporation cannot issue preferred stock after its first capitalization of common stock. *Id.*

§ 1708. The amount of any unpaid stock due from a subscriber to the corporation, shall be a fund for the payment of any debts due from the corporation; the transfer of stock by any subscriber does not relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

Capital stock must be paid in cash. § 1856.

["Unpaid stock" means all unpaid stock, and "any debts due from the corporation" means

Implied powers; amendment of charters, etc.—Code, §§ 1709–1713.

all debts due. Liability attaches to all stockholders; the security extends to all creditors. *Shields v. Land Co.*, 94 Tenn. 158; s. c., 28 S. W. Rep. 668; *Jones v. Whitworth*, 94 Tenn. 602; s. c., 30 S. W. Rep. 736. And a creditor whose debt was created before the capitalization of the company or any subscription to its stock, as well as subsequent creditors, can enforce the liability of the stockholders for unpaid subscription. *Shields v. Land Co.*, 94 Tenn. 124; s. c., 28 S. W. Rep. 668. But when corporate assets are sufficient for payment of corporate debts, stockholders cannot be compelled by creditors to pay up their unpaid subscriptions. *Albirtzgui v. Mining Co.*, 92 Tenn. 598; s. c., 22 S. W. Rep. 739.

Personal liability of directors. *Johnson v. Churchwell*, 1 Head, 146; *Allison v. Coal Co.*, 87 Tenn. 63.

No power resides in the corporation or its officers to release a shareholder from payment of subscription after his liability has become absolute. Consent of all shareholders is requisite, rights of creditors being out of the way. *Cartwright v. Dickinson*, 88 Tenn. 476; s. c., 12 S. W. Rep. 1030. And an unauthorized release of a shareholder is not aided by procurement of new and additional subscriptions. *Id.* Nor is a shareholder released from his liability by reason of his own mistake in supposing his subscription to be cancelled. *Id.* General assignment by an insolvent passes unpaid subscriptions. *Id.*

Stockholders cannot be held liable to pay calls to discharge debts incurred by a new organization of the corporation, after they had bona fide disposed of and sold their stock and interest in the corporation. *Jackson v. Sligo, etc., Co.*, 1 Lea, 210.

A bona fide purchaser of shares of stock, for value and without notice that the subscription price is unpaid, cannot be held for the unpaid subscription. *Albirtzgui v. Mining Co.*, supra; *Planing Mill Co. v. Bank*, 86 Tenn. 252.

Above section contains nothing which affects the question of the ordinary liability of a transferee to the corporation. It only provides for a continued liability of the transferor in the case mentioned. *Id.* 255.

A party purchasing unpaid stock of another, stands in the shoes of the vendor, and as owner thereof becomes entitled to its benefits and subject to its burdens. *Moses v. Bank*, 1 Lea, 398; *Jackson v. Sligo, etc., Co.*, *id.* 213.]

§ 1709. By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

General powers of aff. § 1704. Change bills and banking. §§ 2484-2485.

§ 1710. Corporations formed for the purpose of manufacturing any raw material, by the aid of machinery, into articles suitable for use, whether of wood or metal, or a combination of wood and metal, shall have the privileges of dealing in articles so manufactured, and in articles necessarily or properly connected therewith. Nothing herein shall be construed to exempt such corporation from the payment of a privilege tax on their business as dealers.

§ 1711. The right is reserved to repeal, annul, or modify all charters. If any charter is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market, on the day of withdrawal of said stockholders, as aforesaid. The claims of all creditors are to be paid in preference to said withdrawing stockholders.

See Const., art. I, § 20; § 1695, note, § 1699. Act of 1893, at pp. 31, 32.

[Section construed. *Miller v. Ins. Co.*, 92 Tenn. 167; s. c., 21 S. W. Rep. 39.]

§ 1711a. For the purpose of repairs, rebuilding, or enlarging, or to meet contingencies, or for the purpose of a sinking fund, a private corporation may establish a fund, which they may loan, and in relation to which they may take the proper securities.

Money not to be loaned. § 1870.

§ 1712. Persons acting as a corporation under the provisions of this chapter, will be presumed to be legally incorporated until the contrary is shown; and no such franchise shall be declared actually null or forfeited, except in a regular proceeding brought for the purpose.

Not to be collaterally questioned. § 1693. Evidence of existence. § 1697.

[Third parties cannot enforce the forfeiture of a charter. The State grants it and alone can take it away, but other parties in dealing with such corporations may inquire into their powers and obligations. *State v. Butler*, 15 Lea, 104. And a franchise is a right and personal to grantees, but cannot be transferred without consent of the grantor. *Id.* Against one who has contracted with a body assuming to be a corporation, it need be shown merely that it was a corporation de facto. *Merriman v. Magiveny*, 12 Heisk. 494; *Miller v. Ins. Co.*, 92 Tenn. 183; s. c., 21 S. W. Rep. 39.]

§ 1713. No body of men, acting as a corporation under the provisions of this chapter, shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation; nor shall any person sued on a contract made with such corporation, or sued for an injury to its

Stock subject to execution; fraud; dividends — Code, §§ 1714-1718.

property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense.

Validity of contracts of. § 1700.

§ 1714. Copies of the several articles of incorporation, registered and filed as herein provided, made and certified by the register to be true copies from his office, are receivable in evidence in any proceeding for or against such corporation.

See § 1704, subd. 1, and cross-references.

§ 1715. The stocks in all private corporations formed under this chapter, or heretofore created, or to be hereafter created by special law, are personal property, and subject to levy and sale as such, the company in such case being required to make the proper entries in its stock or transfer book; but such sale will not relieve a stockholder from liabilities which had attached to him as such, previous to the sale, neither will a voluntary sale.

Transfer of stock. § 1707. Execution. §§ 3716, 3747.

[Above section cited. *Montlondon v. Page*, 10 Heisk. 445; *Mayor v. Thomas*, 5 Coldwell, 602; *Ins. Co. v. Sax*, 2 Tenn. Chan. Rep. 509.

Stocks in all private corporations are liable to lien, levy and sale by execution, as other personal property, except that the levy may be made without manuepation. *Pub. Co. v. Pike*, 9 Heisk. 697. Notice to secretary or other officer intrusted with the books of the company, at time of levy, or as soon thereafter as practicable, is sufficient without actual seizure. *Id.*

All stocks subject to execution would be subject to attachment in equity. *Cornick v. Richardson*, 3 Lea, 15; *Young v. Iron Co.*, 85 Tenn. 194.

The stock of a foreign corporation having its situs in this State, may be here attached for a debt of a non-resident owner thereof, although the certificates may be in his possession, beyond the limits of this State. *Id.* 189. And the purchaser of such stock at a sale acquired a valid title as against any subsequent purchaser of the same stock from the non-resident owner. *Id.* 190.

If a certificate of stock is assigned as collateral security, and the assignee sub-pledges it for money loaned to him in ignorance of the owner's equity, the sub-pledgee will be entitled to hold the stock, to the extent of the consideration. *Cherry v. Frost*, 7 Lea, 1; *Randolf v. Bank*, 9 id. 71; *Wilder v. Wilson*, 16 id. 552.

In absence of statute, an assignment of a certificate of stock, whether as collateral or as an absolute sale, passes title to assignee, and is valid against creditors of the assignor without transfer upon books of company or notice to the corporation. *Cornick v. Richards*, 3 Lea, 1. See, also, *Cherry v. Frost*, 7 id. 8; *Bank v. Farrington*, 13 id. 236; *Smith v. R. R. Co.*, 91 Tenn. 238; s. c., 18 S. W. Rep. 546; *Planing Mill Co. v. Bank*, 86 Tenn. 257. Such certificates are mere evidence of ownership; are not negotiable; nor subject to levy of attachment or execution. *Young v. Iron Co.*, supra.

Innocent purchaser of stock, rights and liabilities of. *Caulkins v. Gas Light Co.*, 85 Tenn. 684; *Smith v. R. R. Co.*, 91 id. 222; s. c., 18 S. W. Rep. 546; *Hadley v. Kendrick*, 10 Lea, 525.

Shares of stock are not merely choses in action, but simply represent the interest of the stockholders in the corporation and form a peculiar species of property, sui generis. *Cates v. Baxter*, 37 S. W. Rep. 219.]

§ 1716. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their liabilities, subjects all officers, stockholders, or directors, knowingly participating therein, to the penalties of a misdemeanor; and, moreover, to damages at the suit of any person injured thereby.

False statements. § 1857.

[The cases provided for by above section are cases of intentional fraud and wilful mismanagement. *Hume v. Bank*, 9 Lea, 744. Directors who did not accept and failed to discharge the duties of the office are not liable to creditors. *Id.* 728. Directors of a corporation are its principal agents, and occupy a fiduciary relation toward the corporation and the stockholders. *Id.* 744. They are required to show reasonable capacity for the position, scrupulous good faith, and the exercise of their best judgment. *Vance v. Ins. Co.*, 4 Lea, 385. But are not personally liable for the consequences of a mistake of judgment. *Id.* Though ignorance will not excuse when they have the means of knowledge. *Shea v. Mabry*, 1 Lea, 329.

Directors, although negligent, incur no liability if no loss resulted from their negligence. *Wallace v. Bank*, 39 Tenn. 632; s. c., 15 S. W. Rep. 448.

Officers are directly responsible to stockholders upon the general principles of equity for loss occasioned as well by their neglect as by their positive misconduct. *Shea v. R. R. Co.*, 6 Baxter, 277. Judgment creditors may compel them to account. *Id.* In an action against directors for loss to the corporation caused by their negligence, the recovery inures to benefit of the corporation, all its creditors and shareholders, innocent and guilty, sharing therein according to the stock rights. *Wallace v. Bank*, supra. By whom and in what court such action is maintainable. *Id.* Demand upon corporation to sue, on whom made. *Id.*

Creditors held to have no right of action against persons whose names, without their consent either express or tacit, are published in a newspaper as directors. *Hume v. Bank*, supra.

Rule stated as to directors' common-law liability. *Hun v. Gas Light Co.*, 95 Tenn. 136; s. c., 31 S. W. Rep. 1006.

Directors liable for dividends declared. *Pub. Co. v. Car Wheel Co.*, 95 Tenn. 649; s. c., 32 S. W. Rep. 1097.]

§ 1717. The diversion of the funds of the corporation to other objects than those mentioned in the incorporation; the payment of dividends which leave insufficient funds to meet the liabilities of the corporation; the keeping of false books or accounts, whereby any one is injured; and the making and publishing of false reports, are such frauds as will subject those actively concerned therein to the penalties of the preceding section.

Making false statement. § 1857. Paying dividend when corporation insolvent. § 1859.

§ 1718. The participation of the board of directors, as a board, in such acts, is also a forfeiture of the charter of incorporation, whether done by actual official proceedings, or tacitly acquiesced in with knowledge on the part of a majority of the members.

Forfeiture. § 4162.

§ 1719. Whenever powers, franchises, and privileges have so been granted to a corporation, and they are not used, or assigned to others, in whole or in part, such corporation shall not be dissolved, unless all the corporate property has been appropriated to the payment of its debts.

See §§ 4168, 2000.

[The non-user of its franchises by a corporation will not alone work a dissolution or affect the title and right to its property. *Bache v. Hort. Soc.*, 10 Lea, 436. The non-user by trustees of corporate property does not affect the title of the corporation, nor does the removal of trustees have any such effect. *College v. Bartlett*, 8 Baxter, 231.

By disposing of its property and ceasing to prosecute the business, and by centering of ownership of all stock in one person, a corporation was not dissolved. *Parker v. Hotel Co.*, 34 S. W. Rep. 209. A corporation cannot be dissolved at the instance of the State alone. *Id.* Creditors held not guilty of laches precluding them from asking that the corporation be wound up. *Id.*]

§ 1720. All such corporations, whose charters expire by their own limitation, or are annulled by forfeiture, or dissolved for any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits by or against them, settling their business, disposing of their property, and dividing their capital stock; but not for the purpose of continuing the corporate business.

See Acts of 1887, at pp. 25, 26, 27. Existence may be prolonged. § 1723. Debts not extinguished by. § 4163. Appointment of receiver in chancery. § 5938.

[From §§ 1720-1721 it is clear that a suit may be brought and prosecuted in the name of a dissolved corporation for the purpose of collecting a debt due to it, for the period of five years after dissolution. *R. R. Co. v. Kyle*, 9 Lea, 698. But they did not take away the jurisdiction independently substituted in the court of chancery. *State v. Bank*, 5 Baxter, 101. Jurisdiction of chancery court over assets of dissolved corporation. *Id.* See *Shields v. Land Co.*, 94 Tenn. 124; s. e., 28 S. W. Rep. 668. And beyond the provisions of this statute, there is no modification of the technical common-law rule, that upon dissolution of a corporation, all suits by or against it abate. *R. R. Co. v. Kyle*, supra; *State v. Bank*, supra.]

§ 1721. Upon the dissolution of any such corporation, the managers of the business of such corporation at the time of its dissolution, by whatever name known, are the trustees of the stockholders and creditors, unless other persons are appointed by the general assembly, or by a court of competent authority, and are authorized to settle the affairs of the corporation, dispose of such property as is necessary to pay its debts, and divide among the stockholders the money and property remaining after the payment of such debts and the necessary expenses.

See Acts of 1887, at pp. 25, 26, 27.

[The persons authorized to use the corporate name are the managers of its business at the time of dissolution, or the trustee or trustees duly appointed by the general assembly or a competent court. Such trustees have the power to use the corporate name for five years, or to have the time extended beyond that period. *R. R. Co. v. Kyle*, 9 Lea, 698. As to duties and liabilities, see *Moses v. Bank*, 1 Lea, 401.

The manager of a corporation which has conveyed its property in trust for creditors, held without authority to contract on behalf of the corporation. *State v. McFarland*, 35 S. W. Rep. 1007.]

§ 1722. Such persons have authority to sue for and recover the debts and property of such dissolved corporation in its corporate name; and are jointly and severally responsible to its creditors to the extent of the property which may come into their hands.

See §§ 4163, 5038.

[The remedy in equity to administer assets of a dissolved corporation is ample and clear. *R. R. Co. v. Kyle*, 9 Lea, 696; *State v. Bank*, 5 Baxter, 101; *Kyle v. Ewing*, 5 Lea, 582; *O'Connor v. Memphis*, 6 Id. 733.

"Such persons" means the acting managers at the time of dissolution. *R. R. Co. v. Kyle*, supra. The reason that no action can be maintained at law after the expiration of the five years is that the corporation is no longer in existence to be sued or defend a debt in a proceeding in equity.

To reach the trust fund the corporate existence is not essential, and the proceeding is not affected by this statute. *State v. Bank*, 5 Baxter, 119. The common-law rule as to the civil death of a corporation, and the reversion of its property, is not now in force independent of statute. *O'Connor v. Memphis*, 6 Lea, 732; and cases there cited.]

§ 1723. On application to a chancellor and making a proper case, the power of such trustee, or any person appointed receiver of such dissolved corporation, may be continued for such length of time beyond five years as the chancellor may judge necessary for the purposes contemplated in the three preceding sections.

Existence after dissolution. § 1720.

[A suit in the name of a dissolved corporation, brought more than five years after the dissolution, cannot be maintained unless it appear that, under above section, further power has been granted for closing the business. *R. R. Co. v. Kyle*, 9 Lea, 691.]

MINING, QUARRYING, BORING AND MANUFACTURING COMPANIES.

§ 1851. The following shall be the form of charter for carrying on the business of mining for coal, copper, lead, zinc, mica, iron or other ore or mineral, including the operation of quarrying for slate, limestone or marble; and for sinking shafts, or boring for petroleum, rock oil, salt water or other valuable liquid hidden in the earth; and for the business of manufacturing any raw material by the aid of machinery, into articles suitable for use, as cotton or woolen factories, for making bagging and bale rope, or iron

Mining, etc., companies; charter; annual statements — Code, §§ 1852-1858.

bands, for baling cotton, foundries, rolling mills, blast furnaces, the manufacture of utensils, farming implements or other articles, whether from wood or iron, and in general, the carrying on of any other business properly coming within the definition of a manufactory.

[A supply store is necessary in carrying on the business of an iron furnace and, therefore, fairly included in the powers of the corporation. *Seagright v. Payne*, 6 Lea, 283.

See, also, Act of 1887, relating to purchase of store goods, at p. 25.]

§ 1852. "State of Tennessee—Charter for Incorporation.

"Be it known, that by virtue of the general laws of the land, (here copy the names of the five or more corporators, not under twenty-one years of age) are hereby constituted a body politic and corporate, by the name and style of (here set forth the name of the corporation and the nature of the business, whether mining, the sinking of shafts or the business of manufacturing).

§ 1853. "The general powers, etc., of said corporation are" (here set forth the general powers, etc., as contained in sections 1704-5). It shall also have the power to raise, buy, sell and deal in agricultural products, operate flouring and other mills, and deal in merchandise.

See § 1704 and subds.

§ 1854. The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in sections 1549 to 1572, inclusive, to condemn a right of way necessary for the transaction of the corporate business, not exceeding thirty feet in width, over the lands of any private person or corporation, and such right of way is hereby declared to be a public road.

See Const., art. I, § 21. Certain corporations to have right of way. § 1999.

§ 1855. Annually, during the month of January, the president shall make and publish in a newspaper printed in the county where the principal office of business is located, or if no newspaper is printed in that county, then in an adjoining or the nearest county where a newspaper is printed, a sworn statement, showing the amount of the capital stock and the existing liabilities, and a list of names of the stockholders.

See § 1860.

§ 1856. Nothing but cash shall be taken in payment of any part of the capital stock, or land at a fair cash valuation, and no loan of money shall at any time be made to any stockholder thereof, and any such loan shall

render the directors consenting thereto individually liable for the amount thereof; this liability to extend in favor of innocent stockholders as well as creditors.

Unpaid stock due from subscriber. § 1708. Money not to be loaned. § 1870. Patents as stock. § 1872.

[Stipulation in contract for subscription to capital stock of a manufacturing corporation held to be without consideration, ultra vires, and absolutely void. *Morrow v. I. & S. Co.*, 87 Tenn. 262. Above section construed. *Id.* 274.

That the capital stock may be paid in whole or in part in property suitable for the purposes of the corporation, provided it is taken at a cash value, is supported by above statute and the decisions. *Albelditzig v. Mining Co.*, 92 Tenn. 605; s. c., 22 S. W. Rep. 739; *Kelley v. Fletcher*, 94 Tenn. 6; s. c., 28 S. W. Rep. 1099; *Shields v. Land Co.*, 94 Tenn. 160; s. c., 28 S. W. Rep. 668; *Seagrigh v. Payne*, 6 Lea, 283. And such property may be situated beyond the State. *Albelditzig v. Mining Co.*, supra; *Ins. Co. v. Ins. Co.*, 11 Humph. 1.

Creditors of an insolvent corporation cannot maintain bill against its stock subscribers who have paid their subscriptions in property, for difference between face value of subscription and real value of the property, without distinct averments that the overvaluation of the property was intentionally fraudulent or so gross and palpable as to be fraudulent as to corporate creditors. Averment that property was "not conveyed at a fair cash value, but very far in excess of it," is insufficient. *Jones v. Whitworth*, 94 Tenn. 602; s. c., 30 S. W. Rep. 736; *Kelley v. Fletcher*, supra.]

§ 1857. The making of a false statement to be printed as aforesaid, shall render all persons assenting thereto individually liable to all persons dealing or trading with said company, upon the faith of said fraudulent statement.

Penalties. § 1717. Statement by president. § 1860.

§ 1858. If the indebtedness of said company shall at any time exceed the capital stock paid in, the directors assenting thereto shall be individually liable to the creditors for said excess. The stockholders are jointly and severally liable individually at all times for all moneys due and owing to the laborers, servants, clerks and operatives of the company, in case the corporation becomes insolvent.

Unpaid stock fund for payment of debts. § 1708.

[Liability of directors and of stockholders to corporate creditors. See *Albelditzig v. Mining Co.*, 92 Tenn. 598; *Allison v. Coal Co.*, 87 Id. 60, 63; *Moulton v. Connell*, etc., Co., 93 Id. 377; s. c., 27 S. W. Rep. 672.

Liability of stockholders for wages. See *Albelditzig v. Mining Co.*, supra; *Allison v. Coal Co.*, 87 Tenn. 69. Statutes creating liability of stockholders for wages of employees are strictly construed. *Hand v. Cole*, 88 Tenn. 400; s. c., 12 S. W. Rep. 922. A travelling salesman or drummer falls within persons provided for in above section. *Id.*

Stockholders are not relieved from their liability to employees by a transfer of their stock. *Jackson v. Meek*, 87 Tenn. 69. Employee is not estopped

to proceed against stockholders for his wages by taking note and obtaining judgment against the corporation and receiving his pro rata share of corporate assets. *Id.*

Liability of director who assents to indebtedness beyond "the capital stock paid in." What is "the capital stock paid in." *Pub. Co. v. Car Wheel Co.*, 95 Tenn. 635; s. c., 32 S. W. Rep. 1097.]

§ 1859. If the directors declare and pay any dividend when the company is insolvent, or which declaration of a dividend would diminish the amount of the capital stock, they shall be jointly and severally liable to creditors for the amount of dividends thus declared. Any director may avoid liability by voting against the dividend, or by filing his objections in writing as soon as he ascertains a dividend has been made.

Penalties, § 1717.

[Directors liable for dividends illegally declared. *Pub. Co. v. Car Wheel Co.*, 95 Tenn. 635; s. c., 32 S. W. Rep. 1097.]

A corporation cannot apply dividends due an individual stockholder to a debt due from a firm of which he is a member. *Bank v. Nashville*, etc., Co., 36 S. W. Rep. 960.

Notes of an insolvent corporation for unearned dividends held not a valid claim in the hands of a party taking them before maturity as security for a past-due debt. *Alabama*, etc., Co. v. *Chattanooga*, etc., Co., 37 S. W. Rep. 1004.]

§ 1860. All corporations heretofore created, or which may hereafter be organized, for the purpose of mining and operating mines in the State for copper, coal or iron, or other valuable metal or metallic substance, be and they are hereby authorized upon vote of the stockholders, three-fourths of the stock being represented, and cast in the affirmative, to subscribe for, purchase, hold or dispose of stock in any railroad company, whose line of road shall be contiguous to the works of such company, or so near thereto, as to be used by them in carrying on their necessary operations.

Implied powers. § 1709.

§ 1861. For the purpose of raising the money to pay for such stock or the subscription therefor, such corporations are authorized to indorse the bonds of said railroad company, or to issue company mortgage bonds in such amount, and to mature at such time, and to bear such rate of interest not exceeding the lawful conventional rate of interest existing, and to dispose of said bonds and apply the proceeds thereof, as the stockholders and directors of such company may deem best for their interest.

Power to borrow money. § 1704, subd. 7.

§ 1862. Said mining companies are authorized to mortgage their franchises and estates, real and personal, to secure the pay-

ment of the bonds indorsed or issued as aforesaid.

Corporations may hold property. § 1704, subd. 8, and cross-references.

§ 1863. The stockholders may, by resolution, three-fourths of the entire stock being cast in the affirmative, change, direct and appoint the time and place, at which all subsequent meetings of the directors shall be held, and all meetings and business of the company, so held and transacted in pursuance thereof, shall be as valid and binding upon the company, as though held and done at the place thereof appointed for the meetings of the directors.

§ 1864. Manufacturing companies heretofore or hereafter chartered under the provisions of this article, shall have the power to erect on their own lands elevators, hoists, warehouses and transfer tracks, and operate the same for the elevation, storage and transfer of material, goods, wares and merchandise for the public, and they may charge and collect reasonable compensation therefor.

§ 1865. Any corporation, heretofore chartered, shall have the right, upon an affirmative vote representing a majority of the stock at a general meeting called for that purpose, to incorporate the powers conferred herein in their charters, by the board of directors of said corporation copying said amendment, and making an application in these words: "We, the undersigned, composing the board of directors of (here insert the name of the corporation) apply to the State of Tennessee for an amendment to the charter of said corporation, for the purpose of investing it with the power (here insert the clause granting powers in section 1 of the act). Witness our hands the..... day of (to be signed by the directors). The same shall be probated and registered as provided for charters, and when so done, the amendment shall be complete.

Powers subject to repeal. § 1699, and cross-references.

§ 1866. These provisions shall apply also to any corporation for manufacturing brick, tile, gas retorts, or any other articles of use to be manufactured from clay or earth; also, for the purpose of manufacturing starch, glue, bone dust, powder, and, in general, the carrying on any business that comes within the definition of a manufacturing enterprise.

§ 1867. Such corporations shall have the right to purchase, use or dispose of such patent rights as may be necessary or useful in its business in as full and ample a manner as is now allowed by law to individuals.

§ 1868. They shall have the power to take and hold all such real estate as may be

mortgaged to it or conveyed in trust to secure any debt due to the corporation arising from a sale or purchase of its territorial right under its letters patent, and shall have the power to purchase any such real estate at any sale thereof, and to hold, sell, or otherwise dispose of the same as may be deemed expedient.

See § 1704, subd. 3, and cross-references.

§ 1869. The president shall, in January, make an annual statement, showing the amount of the capital stock and the existing liabilities, and a list of the stockholders — which shall be attested by two or more of the directors, and be spread upon the minutes by the secretary.

See § 1855. False statements. § 1857.

§ 1870. No loan of money shall be made at any time to any stockholder thereof, nor to any one else, but a dividend must be declared whenever there is an amount sufficient in the hands of the treasurer to pay four per cent. on the capital stock, and any such loan or failure to declare and pay the dividend, shall render the directors assenting thereto individually liable for the amount thereof: this liability to extend in favor of innocent stockholders as well as creditors.

Section 1870 is repealed by Laws 1897, chap. 49; approved March 19, 1897.

Corporation may loan money, when. § 1711a. Money not to be loaned to stockholders. § 1856.

§ 1871. If the indebtedness of said company shall at any time exceed the capital stock paid in, the directors assenting thereto, shall be individually liable to the creditors for said excess.

See §§ 1858, 1859.

[Under above section directors are individually liable for such specific debts only as were contracted with their assent in excess of the paid-up capital and remain unpaid after corporate assets are exhausted. *Allison v. Coal Co.*, 87 Tenn. 60.]

§ 1872. Any manufacturing company hereafter or heretofore incorporated may receive the assignment of any patent in payment of any stock subscribed to the amount of the value of said patent, as agreed on by the subscriber and the corporation.

See § 1856, and cross-references.

§ 1873. All manufacturing establishments in this State shall have power to appoint one or more special guards or watchmen whose duty it shall be to guard and watch said

property, who shall possess all the powers now conferred by law on policemen in the city of Nashville.

Corporation may appoint agents. § 1704, subd. 5.

§ 1874. Upon the death, resignation or removal by said companies of any guard or policeman appointed by any manufacturing companies and blood horse associations, said company or association shall have the power to fill the vacancy or vacancies by appointment, which appointee or appointees shall have the same powers as his or their predecessor or predecessors had.

CHAPTER IV.

Foreign Corporations.

ARTICLE I. MANUFACTURING AND MINING.

Sec. 1992. Foreign mining and manufacturing corporation.

1993. Charter of foreign corporation to be filed with secretary of State.

1994. Legal status and liability of.

1995. May acquire and hold property.

1996. Property liable for debts.

1997. Resident creditors have priority.

1998. Taxation.

1999. Right of way.

2000. When to begin work; rights forfeited.

2001. Municipal powers.

2002. Liquor prohibited.

2003. Charters, when void in part.

§ 1992. Corporations chartered or organized under the laws of other States or countries, for the purpose of mining ores or coals, or of quarrying stones or minerals, of transporting the same, or erecting, purchasing or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton or wool, or of building dwelling-houses for their workmen and others, or gas works, or water works, or other appliances designed for the promotion of health, good order, or general utility, in connection with such mines, manufactories and dwelling-houses, may become incorporated in this State, and may carry on in this State the business authorized by their respective charters, or the articles under which they are or may be organized, and may enjoy the rights and do the things herein specified, upon the terms and conditions, and in the manner and under the limitation herein declared.

See Act of 1891, at p. 29. Service of process on foreign corporation same as on domestic. §§ 3536-3539, and notes. And see Act of 1887, at p. 27.

[A foreign corporation, for mining and manufacturing purposes, may be incorporated and carry on its business in this State by complying with conditions prescribed by this chapter; and where its chief office, books, etc., are here, and its business carried on here, compliance with requirements of this act will be presumed; and it will be deemed to have its situs in this State, and to stand in all particulars as a domestic corporation. *Young v. Iron Co.*, 83 Tenn. 189. The president of a foreign corporation, who is not made

Foreign corporations; charters; rights of creditors, etc.—Code, §§ 1993–1999.

party defendant to a bill, but merely served with process as principal officer of the corporation, is not a party to the suit. *Peters v. Neely*, 16 Lea, 275. Service on such president, sufficient when. *Id.* Jurisdiction of local courts over foreign corporations. *Id.* 276.

§ 1993. That each and every corporation created or organized under or by virtue of any government other than that of this State, of the character named in section 1992, desiring to carry on its business in this State, must first file in the office of the secretary of State a copy of its charter or articles of association, certified in the manner directed by law for the authentication of the statutes of the State or country under whose laws such corporation is chartered or organized, and must cause an abstract of the same to be recorded in the office of the register of each county in which such corporation proposes to carry on its business or to acquire any lands.

See §§ 1694, 1703; Act of 1895, at p. 32.

[A bill by a foreign corporation doing business in the State should be dismissed, it not being shown that it had complied with the statute as to filing charter and registering abstract of same. *Cumberland Land Co. v. Canter Land Co.*, 35 S. W. Rep. 886.

Allegations of a bill held sufficient to charge a foreign corporation with a violation of the statute. *Myers Mfg. Co. v. Wetzel*, 35 S. W. Rep. 896.

Building associations are subject to the requirements of above section. *Id.*]

§ 1994. Such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created or organized under the laws of this State.

May sue and be sued. § 1704, subd. 1, and cross-references.

§ 1995. Such corporations may purchase, acquire, and hold real estate in fee, or any other interest less than the fee, and personal property of every kind, as they may deem necessary or suitable for the carrying on of the business specified in their said charters or articles of association, filed as aforesaid with the secretary of State, and may sell, lease, and convey such real estate as natural persons may do. And the State of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or non-residence of the shareholders of such corporations, or any of them.

See § 1704, subd. 3.

§ 1996. The corporations, and the property of all corporations coming under the provisions of this article, shall be liable for all

the debts, liabilities and engagements of said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payments of their debts, engagements and contracts.

May borrow money. § 1704, subd. 7. Property subject to debts. § 5037. Unpaid stock a fund for. § 1708. Debts not extinguished by dissolution. § 4163. Execution. §§ 3747, 3716.

§ 1997. Nevertheless, the creditors who may be residents of this State, shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition.

Debts to be paid pro rata. § 5038.

§ 1998. The said corporation shall be liable for taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation; but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufactures in this State or otherwise.

See § 1698, and Act of 1895, at p. 32.

§ 1999. Such of said corporations as shall engage in the mining of coals, iron ore or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or water way at the point or place most convenient for its operation and its business, and for this purpose such corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.

See Const., art. I, § 21. Power of condemnation. § 1854.

Foreign corporations; change bills, etc.—Code, §§ 2000–2003, 2478, 2484, 2485, 2768.

[Above section relates only to mining and manufacturing companies, and does not apply to insurance companies. *State v. Ins. Co.*, 92 Tenn. 431; s. c., 21 S. W. Rep. 893.

§ 2000. All corporations coming under these provisions shall, in good faith and truly, within one year after filing with the secretary of State the certified copy of the charter or articles of association as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of associations as in this article declared; it being a chief object of this article to secure the opening and development of the mineral resources of the State, and to facilitate the introduction of foreign capital, and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this State within one year after filing its said charter or articles of association in the office of the secretary of State, all rights and privileges conferred by this article shall lapse and become void and of no effect.

See § 1719, and cross-references.

§ 2001. Any corporation obtaining and having these privileges, may establish towns, villages, or settlements for the use and residence of its employees, and others, on any lands acquired by it, and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages, may establish such regulations for the government thereof as shall not be inconsistent with the laws of this State.

[The legislature may confer the powers embraced in above section upon any corporation it may see fit. *State v. Ins. Co.*, 92 Tenn. 435; s. c., 21 S. W. Rep. 893.]

§ 2002. It shall not be lawful for any person or persons (except for medical uses as evidenced by the written order of some duly certified medical practitioner), nor for any corporation to distill, have, make, sell, barter, or give away, any spirituous liquor or intoxicating drink of any kind, whether described as "bitters," or by any other name that may be used to disguise its real nature, upon any lands acquired by, nor within a radius of five miles, (except within the boundaries of an incorporated town), from any mine or quarry, or of any furnace, rolling mill, foundry or factory of any kind established or purchased by any such corporation, so long as such mine, quarry, furnace, rolling mill, foundry or factory is actually worked, or held for the purpose of being worked, or whilst under construction.

§ 2003. If any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the secretary of State, should be in contravention or viola-

tion of the laws of this State, all such parts thereof as may be found to be in conflict with the laws of this State shall be null and void.

TITLE XIV. OF REGULATIONS OF TRADE AND COMMERCE.

Ch. 5. Of private seals.
6. Of change bills and banking.
22. Of liens.

CHAPTER V.

Of Private Seals.

Sec. 2478. Private seals, except corporate, abolished.

§ 2478. The use of private seals in written contracts, except the seals of corporations, is abolished, and the addition of a private seal to an instrument of writing hereafter made, shall not affect its character in any respect.

See § 1704, subd. 2.

CHAPTER VI.

Of Change Bills and Banking.

Sec. 2484. Corporation forfeits charter by paying out change bill.

2485. Misdemeanor to establish banking institutions.

§ 2484. No turnpike, railroad, or other company, incorporated under any law of this State, shall pay out by its agents or officers any change bills, notes or papers, issued without authority of law, the circulation or passing of which is prohibited by the laws of this State; and if such corporation allow the same, it shall incur a forfeiture of its charter.

See § 1704, subd. 7. Implied powers. § 1709.

[The ordinary trade ticket used as a mode of keeping accounts of drayage between merchant and draymen is not a change bill. *State v. Fisk*, 3 Sneed, 695.]

§ 2485. No person, association, or corporation, unless authorized by law of this State or of the United States, shall establish or put in operation any banking institution, or office of discount or deposit. A violation of this section is a misdemeanor, punishable by a fine of ten thousand dollars, to go into the common school fund.

See § 1870, and cross-references.

CHAPTER XXII.

Of Liens.

ARTICLE VIII. LIEN OF EMPLOYES.

Sec. 2768. The Lien and its duration.

2769. To be enforced within three months.

2770. Lien subordinate to valid lien and bona fide purchases.

§ 2768. All employees and day laborers of any corporation or partnership firm, doing or carrying on any corporation or partner-

Actions; where brought; service of summons — Code, §§ 2769, 2770, 3516, 3536-3539.

ship business within the State of Tennessee, shall have a lien upon the corporation or firm property, real and personal, for their labor and services performed for such corporation or partnership for wages or compensation in arrears or unpaid for three months.

Above section is amended by L. 1897, chap. 78; approved February 10, 1897. See Act, p. 34.

Liability of stockholders for employees' wages. § 1858, and note. See Acts of 1887 and 1891, for protection of employees, at pp. 25, 26, 31.

§ 2769. This lien shall be enforced by attachment or otherwise, as in other cases; and it shall be lost by a failure to begin proceedings to enforce it within three months from the time the lien attached.

§ 2770. The rights of bona fide purchasers, and of persons having valid liens at the time proceedings are instituted to enforce the lien existing under this article, shall be superior thereto.

[“A valid lien,” under this act, is held to mean a valid prior lien. *Galloway v. Blue Springs Mining Co.*, 37 S. W. Rep. 1016.]

Part III. Of the Redress of Civil Injuries.

TITLE I. OF CIVIL ACTIONS.

- Ch. 4. Of the place of bringing civil actions.
5. Of the mode of commencing civil actions.
13. Of execution.

CHAPTER IV.

Of the Place of Bringing Civil Actions.

Sec. 3516. Action against a corporation, where brought.

§ 3516. When a corporation or company or individual has an office or agency in any county for the transaction of business, actions growing out of or connected with the business of that office or agency, may be brought in the county in which such office or agency is located.

Service on foreign corporation. See Act of 1887, at p. 25. See note to § 3539.

[An action against a corporation for personal injury may be brought in any county where it has an office or agency. *Toppins v. R. R. Co.*, 5 Lea, 600. The office or agency must be located in the county. Service upon traveling agent only temporarily in the county is invalid. *R. R. Co. v. Walker*, 9 Lea, 475.

CHAPTER V.

Of the Mode of Commencing Actions.

ARTICLE IV. PROCESS AGAINST CORPORATIONS.

- Sec. 3536. Service on corporations.
3537. Same.
3538. Same.
3539. Same.

§ 3536. Service of process on the president or other head of a corporation, or, in his

absence, on the cashier, treasurer, or secretary, or, in the absence of such officers, on any director of such corporation, shall be sufficient.

See § 3539, note.

[Service of process on president of company is sufficient to make it a party, whether it is a domestic or a foreign corporation. *Peters v. Neely*, 16 Lea, 280; *R. R. Co. v. Walker*, 9 id. 475; *R. R. Co. v. Eakin*, 6 Coldwell, 535. Stockholders are distinct parties from the corporation, and service of process on them does not make the corporation a party. *Bache v. Hort. Soc.*, 10 Lea, 436; *Lillard v. Porter*, 2 Head, 177. A corporation held properly served with process in an action to wind it up. *Parker v. Hotel Co.*, 34 S. W. Rep. 209.]

§ 3537. If neither the president, cashier, treasurer, or secretary resides within the State, service on the chief agent of the corporation, residing at the time in the county where the action is brought, shall be deemed sufficient.

See § 3539, note.

§ 3538. If the action is commenced in the county in which the corporation keeps its chief office, the process may be served on any one of the foregoing officers, in the absence of those named before him.

See § 3539, note.

§ 3539. When a corporation, company, or individual has an office or agency, or resident director in any county other than that in which the chief officer or principal resides, the service of process may be made on any agent or clerk employed therein in all actions brought in such county against said company growing out of the business of, or connected with, said company or principal's business.

See Act of 1887, to subject foreign corporations to suit, at p. 27.

[The word “officer” in above section has been held to be a misprint, and to mean office. “The entire section was very intentionally drawn.” *Toppins v. R. R. Co.*, 5 Lea, 604; *Telephone Co. v. Turner*, 88 Tenn. 267; s. c., 12 S. W. Rep. 544.

Sections 3536-3539 apply equally to domestic and foreign corporations having an office or agency and a resident local agent in the county in which suit is brought. *Id.*; *R. R. Co. v. Walker*, 9 Lea, 475; *Peters v. Neely*, 16 id. 280; *R. R. Co. v. Barnhill*, 91 Tenn. 400; s. c., 19 S. W. Rep. 21.

A railroad corporation that operates under one management a continuous line through this and other States, and has separate charters from each, is a resident and domestic corporation, and subject, as such, to suit and garnishment in courts of this State. *R. R. Co. v. Barnhill*, 91 Tenn. 395; s. c., 19 S. W. Rep. 21.

Sheriff having process against a corporation is not bound to show by return that person upon whom served is president or other head officer, treasurer, etc., of the corporation. *Wartrace v. Turnpike Co.*, 2 Coldwell, 515.]

Execution; actions against corporations and officers — Code, §§ 3716, 3747, 3750, 4146—4150.

CHAPTER XIII.

Of Execution.

ARTICLE 1. REQUISITES OF EXECUTION.

Sec. 3716. By distringas against corporations.

§ 3716. The party in whose favor a judgment or decree is rendered against a corporation, may sue out a distringas or fieri facias, to be levied as well on the choses in action as on the goods, chattels, lands, and tenements of the corporation; and in case of a levy on choses in action, the court may appoint a receiver to collect the same.

Stock subject to levy. § 1715. See, also, § 3747.

ARTICLE IV. LEVY OF EXECUTION.

Sec. 3747. On stock in turnpikes and railroads.
3750. On choses in action of a corporation.

§ 3747. The stock in all the turnpikes and railroads chartered in this State shall be deemed personal property, and be subject to levy and sale by execution.

See § 1715, and note, and § 3716.

§ 3750. An execution against a corporation may be levied of its choses in action, as well as of the goods and chattels, lands and tenements of such corporation; and in case of a levy on choses in action, the court may appoint a receiver to collect the same.

[Section cited. *Hillman v. Moore*, 3 Tenn. Chan. Rep. 461.]

TITLE II. OF SPECIAL ACTIONS AND PROCEEDINGS.

CHAPTER VIII.

Of Proceedings in the Name of the State against Corporations.

Sec. 4146. When action lies against corporation.
4147. Same; against directors and officers.
4148. By bill in circuit or chancery court.
4149. By whom brought.
4150. Upon information of private person.
4151. Relator liable for costs.
4152. Substance of bill.
4153. Issues for jury.
4154. Extraordinary process.
4155. Answer.
4159. Several claimants.
4161. Judgment of exclusion.
4162. Of dissolution.
4163. Debts not extinguished.
4164. Costs, when State party.
4165. Death of relator.
4166. Costs on abatement.
4167. Error to Supreme Court.
4168. Corporation not dissolved by non-user, unless, etc.

§ 4146. An action lies, under the provisions of this chapter, in the name of the State, against the person or corporation offending, in the following cases:

1. Whenever any person unlawfully holds or exercises any public office or franchise within this State, or any office in any corporation created by the laws of this State.

3. When any persons act as a corporation within this State, without being authorized by law.

4. Or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation.

5. Or exercise powers not conferred by law.

6. Or fail to exercise powers conferred by law and essential to the corporate existence.

See § 1712, note; § 1718.

§ 4147. The action, also, lies to bring the directors, managers and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of property entrusted to their care; to remove such officers or trustees on proof of misconduct; to prevent malversation, peculation and waste; to set aside and restrain improper alienations of such property or funds, and to secure them for the benefit of those interested; and generally to compel faithful performance of duty.

§ 4148. The suit is brought by bill in equity, filed either in the circuit or chancery court of the county or division in which the office is usurped or held, or the corporation or supposed corporation holds its meetings, or has its principal place of business.

See § 5038.

§ 4149. The suit is brought by the attorney-general for the district or county, when directed so to do by the general assembly, or by the governor and attorney-general of the State concurring.

See § 5039.

[Leave of court not necessary in order to file bill. It seems to be a matter of right by attorney-general of the district upon information. *State v. Campbell*, 8 Lea, 76.

However the suit may be brought, it must be by the State's attorney. *State v. McConnell*, 3 Lea, 332; *State v. Turnpike Co.*, 3 Tenn. Chan. Rep. 167.

The attorney-general is a necessary party to a bill filed in name of the State, on relation of third person, to have franchises of the corporation declared forfeited. *State v. Turnpike Co.*, 3 Tenn. Chan. Rep. 163.]

§ 4150. It is also brought on the information of any person, upon such person giving security for the costs of the proceedings, to be approved by the clerk of the court in which the bill is filed.

[The sense and grammatical construction require that above section should be read: "It is also brought by the attorney-general on the information of any person." *State v. Turnpike Co.*, 3 Tenn. Chan. Rep. 163.]

Actions against corporations and officers — Code, §§ 4151-4155, 4159, 4161-4168.

§ 4151. When the suit brought at the relation of a private individual, it shall be so stated in the bill and proceedings, and such individual is responsible for costs in case they are not adjudged against the defendant.

See § 4164.

§ 4152. The bill will set forth briefly, and without technical forms, the grounds upon which the suit is instituted, and the suit will be conducted as other suits in equity.

[Section cited and construed, *State v. Wright*, 5 Helsk. 614; *Same v. Same*, 10 id. 239.]

§ 4153. Such issues of fact as may become necessary to try by jury in the progress of the cause, will be made up under the direction of the court, and submitted to a jury empaneled forthwith.

§ 4154. The court is authorized, upon the filing of the bill, properly verified, in all proper cases, to grant attachments and injunctions, and appoint receivers to effect the ends of justice, and to make all such orders, rules and decrees, according to the practice of a court of chancery, as may be necessary to accomplish the objects had in view.

§ 4155. The defendants appear and answer the bill in the usual way, and such answer shall not be read against them in any criminal prosecution brought against them, or either of them.

§ 4159. When several persons claim to be entitled to the same office or franchise, they may be all made defendants, so as to determine their respective rights.

§ 4161. When a defendant, whether a natural person or a corporation, is adjudged guilty of usurping, unlawfully holding or exercising any office or franchise, judgment shall be rendered that such defendant be excluded from the office or franchise, and that he pay the costs.

§ 4162. If it be adjudged that a defendant corporation has, by neglect, non-user, abuse or surrender, forfeited its corporate rights, judgment will be rendered that the defendant be altogether excluded from such rights and be dissolved; and also that the corporation, its directors or managers, as the case may be, pay the costs.

See note to § 1719. Forfeiture of charter. § 1718. Same by paying out change bill. § 2484.

[What neglect, wilful abuse or excess of power is necessary to work a forfeiture of corporate franchises, *State v. Ins. Co.*, 8 Humph. 236, 254; *State v. Turnpike Co.*, 2 Sneed, 254. For modern rule, see *State v. Turnpike Co.*, 17 S. W. Rep. (Tenn.) 131.]

§ 4163. Such judgment of dissolution does not extinguish the debts due to or from the corporation; but the court shall appoint a receiver, with full power to take possession of all the debts and property, and sell,

dispose of, collect and distribute the same among the creditors and other persons, interested, under the orders of the court.

Existence after dissolution for certain purposes. § 1720. Appointment of receiver in chancery. § 5038.

§ 4164. If such action is at the suit of the State alone, and judgment is for the defendant, or the defendants are insolvent, the costs are paid as in other State cases.

See § 4151.

§ 4165. Should the relator die pending the action, the suit abates, unless by the second term thereafter it is revived in the name of some person who, on application, and giving security for costs, is substituted in the place of the deceased relator. If there are several relators, the suit abates only on the death of all.

§ 4166. On the abatement of the action as above, judgment is rendered against the sureties of the relator for the costs.

See § 4151.

§ 4167. Either party is entitled to take the case to the supreme court for the correction of errors, as in other chancery cases.

§ 4168. A corporation is not dissolved by the non-use or assignment to others, in whole or in part, of its powers, franchises, and privileges, unless all the corporate property has been appropriated to the payment of its debts; and any creditor, for himself and other creditors, whether he has recovered judgment or not, or any stockholder, for himself and other stockholders, may file a bill under the provisions of this chapter, to attach the corporate property, and have such property applied to the payment of the debts of the corporation, and any surplus divided among the stockholders.

See §§ 1719-1723, and notes; §§ 5037, 5038, and notes.

[Independent of this statute, the remedy in equity to administer assets of a dissolved corporation is ample and clear. *State v. Bank*, 5 Baxter, 101; *R. R. Co. v. Kyle*, 9 Lea, 696.

Above section only in terms applies to cases where the powers, franchises and privileges of the corporation have ceased to be used or been transferred to another, leaving at least some part of the property unappropriated to the debts. *Id.*

Where bill was filed by certain creditors, under above section, but not also on behalf of the other creditors; held, that this defect was cured by the provision of a decree directing notice to be given for the other creditors to come in and participate in the proceeds of the corporate property. *Moss v. Academy*, 7 Helsk. 283.

Objection that creditor of an insolvent corporation files his bill for his own use only, is obviated by the fact that the suit has been consolidated with another filed for all creditors. *Swepton v. Bank*, 9 Lea, 713.

The non-user of its franchise by a corporation will not alone work its dissolution or affect the title and right of its property. *Bache v. Hort*.

Books as evidence; suits in chancery — Code, §§ 4537, 5037-5039, 5475.

Soc., 10 Lea, 436; *College v. Bartell*, 8 Baxter, 235; *Mfg. Co. v. Gaskell*, 2 Lea, 748.

It is not essential that court shall have power to declare a forfeiture of the charter. It may find the fact that the corporation is involved, or has ceased to do business, or has granted its franchise in whole or in part to others, and upon the adjudication of any notice of these facts has the right to administer the effects for benefit of creditors. *Smith v. Ins. Co.*, 6 Lea, 569.

Courts of chancery in this State have jurisdiction to wind up the business of a foreign corporation so far as to administer all its assets within their jurisdiction and distributing some among domestic creditors, where the corporation has become insolvent or ceased to use its franchises. *Smith v. Ins. Co.*, 6 Lea, 564; *Lelbold v. Marony*, 7 Id. 128; *Smith v. Ins. Co.*, 3 Tenn. Chm. Rep. 592.

No diligence on part of one or more creditors can defeat right of others to a pro rata distribution of the funds. *Marr v. Bank*, 1 Coldwell, 471.

Chancery may impound tolls of a turnpike company as well as its entire property and franchises for benefit of creditors, who will share equally when company has become insolvent. *Baxter v. Turnpike Co.*, 10 Lea, 488.

Service of process on stockholders does not make the corporation a party. *Bache v. Hort. Soc.*, 10 Lea, 436. Jurisdiction of courts of equity to wind up corporations defined. *O'Connor v. Hotel Co.*, 93 Tenn. 708; s. c., 28 S. W. Rep. 598.

Bill held maintainable under above section. *Pub. Co. v. Car Wheel Co.*, 95 Tenn. 635; s. c., 32 S. W. Rep. 1097.

A corporation not insolvent, when. *McClaren v. Mill Co.*, 95 Tenn. 696; s. c., 35 S. W. Rep. 88; *Buchanan v. Barnes*, 34 Id. 425.

Evidence examined, and held error to disallow a claim of foreign corporation against an insolvent domestic corporation. *Alabama, etc., Co. v. Chattanooga, etc., Co.*, 37 S. W. Rep. 1004.

Where a conveyance made by an insolvent corporation to secure a general creditor covers practically all its property, and must result in winding up its business, a court of chancery will set it aside. *Allison v. Bradt Printing Co.*, 37 S. W. Rep. 10.

Where a new company takes all the assets of an insolvent company, such assets will be treated as a fund for the payment of the old company's indebtedness pro rata. *First Nat. Bank v. Chattanooga Pulley Co.*, 37 S. W. Rep. 8.

The assets of an insolvent non-going corporation are not attachable by creditors. *Levin v. Grocery Co.*, 38 S. W. Rep. 733.

Where a corporation purchases the property and franchises of another corporation, agreeing to pay its debts, it is liable on a judgment recovered against the old company in a suit pending at the execution of the contract. *Noll v. Chattanooga Co.*, 38 S. W. Rep. 287.

A purchaser of the mercantile stock of an insolvent corporation can claim the goods, as against corporate creditors, though the proceeds of the sale were misappropriated by the corporate officers. *Levin v. Grocery Co.*, 38 S. W. Rep. 733.]

TITLE III. OF EVIDENCE.

CHAPTER II.

Certain Kinds of Evidence and the Effect Thereof.

ARTICLE III. COPY OF CORPORATION BOOKS.

Sec. 4537. Corporate books as evidence.

§ 4537. In actions between corporations and their stockholders, a copy of the proceedings of the board of directors, and the subscription and other books of the company, certified by the secretary under the corporate seal, shall be evidence.

See § 6224, and cross-references. Books of corporation to show what. § 1707.

TITLE IX. OF THE CHANCERY COURT.

CHAPTER I.

Of the Jurisdiction of the Chancery Court.

ARTICLE I. EXCLUSIVE JURISDICTION.

Sec. 5037. To subject corporate property to payment of debts.

5038. Receiver for corporation.

5039. Suits by State against corporation.

§ 5037. The creditors of a corporation may also, without first having obtained a judgment at law, file a bill in the court of chancery, to attach the property of the corporation, and subject the same, by sale or otherwise, to the satisfaction of their debts, when the corporate franchises are not used, or have been granted to others in whole or in part.

Property liable for debts. § 1996.

[See notes to §§ 4168, 5038. Also, *McKeldin v. Gouldy*, 91 Tenn. 679. Bill held maintainable under above section. *Pub. Co. v. Car Wheel Co.*, 95 Tenn. 649; s. c., 32 S. W. Rep. 1097.]

§ 5038. In such cases the court may appoint a receiver, take an account of the affairs of the corporation, and apply the property and effects to the payment of debts pro rata, and divide the surplus, if any, among the stockholders.

See §§ 4163, 1722.

§ 5039. Courts of chancery have power to hear and determine all controversies between the State and incorporated companies, their stockholders or creditors, growing out of the internal improvement laws of this State, upon bill filed by the attorney-general on behalf of the State.

See § 4149.

Part IV. Of Crimes.

CHAPTER III.

Of Offenses against Public and Private Property.

ARTICLE VI. EMBEZZLEMENT, BREACH OF TRUST, ETC.

Sec. 5475. Embezzlement of clerk of corporation.

5484. Issuance of false certificate of stock.

§ 5475. Any officer, agent, or clerk of any incorporated company, or any clerk or agent of a copartnership or private person, except apprentices and other persons under the age of eighteen years, who embezzles or fraudulently converts to his own use any money or property of any other, which has come to his possession, or is under his care by virtue of such employment, shall, on con-

viction, be punished by confinement in the penitentiary not less than five nor more than twenty years.

[Above statute includes employes of foreign corporations. *State v. O'Brien*, 94 Tenn. 79; s. c., 28 S. W. Rep. 311. And such employe cannot defend the charge on ground that the corporation had not complied with the conditions of the statutes (see Act of 1891, at p.) so as to have the right to collect or pay out money into the State. *Id.*]

§ 5484. If any president, cashier, treasurer, secretary or other officer or agent of any bank, railroad, manufacturing or other corporation, shall sign, with intent to issue, sell or pledge, or shall issue, sell or pledge, any false, fraudulent or imitated certificate, or other evidence of the ownership or transfer of any share of the capital stock of such corporation, or any instrument purporting to be a certificate or evidence as aforesaid, not authorized by the charter or by-laws of the corporation, he is guilty of a felony, and shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

TITLE VI. OF THE EVIDENCE IN CRIMINAL ACTIONS.

CHAPTER I.

Of Witnesses.

ARTICLE I. GENERAL PROVISIONS.

Sec. 6224. Proof of corporate existence.

§ 6224. On all trials for offences, where the existence of a corporation must be shown, a legally authenticated copy of the charter of such corporation, or a book purporting to be the public statute book of the United States, or of the particular State in which the charter is printed, shall be prima facie evidence of the existence of such corporation.

See §§ 1693, 1696, 1714, 4537.

[Where an indictment alleged the existence of a foreign corporation, it was held necessary upon the trial to produce in evidence an authenticated charter of said corporation, or a book purporting to be the public statutes book of said State, in which said charter is printed. *Jones v. State*, 5 Sneed, 346.]

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1884.

1. To incorporate purchasers of franchises when sold under mortgage.
2. For relief and protection of workmen in the purchase of store goods.
3. To define the powers of certain corporations.
4. To prevent corporations from infringing upon the right of employes.
5. To empower corporations to lease and dispose of their property and franchises.
6. To amend sections 1720 and 1721 of the Code.
7. To subject foreign corporations to suit in this State.
8. To compel corporations issuing scrip or checks to redeem the same.
9. To allow corporations to increase the value of their shares.
10. To prevent conspiracy and formation of trusts and illegal combinations.
11. To make valid articles or charters taken out under the General Incorporation Laws.
12. To amend sections 1992 to 2003 of the Code, relating to foreign corporations.
13. To amend sections 1992 et seq. of the Code, relating to foreign corporations.
14. To declare unlawful all combinations in restraint of manufacture and sale.
15. To compel corporations to pay employes at regular intervals, and in lawful money.
16. To repeal certain laws authorizing amendments of charters.
17. To validate contracts heretofore made in this State by foreign corporations.
18. To provide tax upon corporations for privilege of organizing or for increasing capital stock.
19. To permit certain corporations to amend charters and legalizing certain amendments.
20. Amending act to protect employes against insolvency.
21. To prevent use of corporate funds for election purposes.
22. To require applicants for charters to fix amount of capital stock.
23. To prohibit trusts and combinations.
24. Revenue Act.
25. Amending Act 17.

Act 1.

AN ACT to incorporate the purchasers of the property and franchises of any incorporated company of the State, when sold under mortgage.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That when any corporation of this State may mortgage, or has heretofore mortgaged, its property and franchises under the provisions of its charter of the general laws of this State, and said mortgage has been or shall hereafter be foreclosed under a power of sale given in said mortgage, or the decree of any court of this State or the United States, then, and in that case, the purchaser at said sale shall by virtue thereof be entitled to and be invested with the said property and franchises, and with all the rights, privileges and immunities appertaining thereto under the act of incorporation of said company, the amendments thereto, or the general laws of this State, in as full manner as the said corporation or company is or was entitled.

§ 2. Be it further enacted, That the purchasers of the property and franchises of such corporation may, after being put in possession of the same under such sale, meet

Store goods; receipt of deposits — Acts, March 25 and 26, 1887.

together, adopt a name for the corporation, elect a board of directors of not less than three nor more than nine members, a majority of whom shall reside in this State; and at such meeting any person interested in such purchase shall be entitled to one vote for every one hundred dollars (\$100) of his interest, unless all the persons interested in the purchase shall otherwise agree; and the said board of directors shall proceed to elect a president and such other officers as may be necessary for the proper management of said property and franchises, fix their compensation and duties, adopt by-laws for the government of the corporation not inconsistent with the laws of this State; adopt a common seal, fix the amount of the capital stock of said corporation and divide the same between the persons interested in such purchase in proportion to their respective interests. The said board of directors shall make a certificate showing the name of the corporation, the amount of its capital stock, the shares into which the same is divided, the number and residence of the board of directors, the location of the corporation, the name by which it was heretofore known, and shall cause the same to be signed by the president and the members of the board and filed in the office of the secretary of State of this State; and thereupon the said purchasers shall be a body corporate under the name so adopted, with all the rights, powers and franchises conferred by the act of incorporation, the amendments thereto and the general laws of this State; Provided, That nothing in this act contained shall be so construed as to exempt said corporation or its property from liability to State, county and municipal taxation; And provided further, That the purchasers waive any right of exemption from taxation if any existed in the original charter or other law of this State in favor of such corporation.

§ 3. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved April 2, 1885.)

[Where a corporation purchases the property and franchises of another corporation, agreeing to pay its debts, it is liable on a judgment recovered against the old company in a suit pending at the execution of the contract. *Noll v. Chattanooga Co.*, 38 S. W. Rep. 287.]

Act 2.

AN ACT for the relief and protection of workmen in the purchase of store goods and supplies.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That it shall not be lawful for any manufacturer, firm, company, or corporation, their agents, clerks, or superintendents in this State, who own or control a store for the sale of general store goods or merchandise in connection

with their manufacturing or other business, to attempt to control their employes or laborers in the purchase of store goods and supplies at the aforesaid store by withholding the payment of wages longer than the usual time of payment, whereby the employe would be compelled to purchase supplies at said manufacturer's, firm's, company's, or corporation's store.

§ 2. Be it further enacted, That any manufacturer, firm, company, or corporation, offending against the provisions of this act, the same shall be a misdemeanor, and on conviction in any court having jurisdiction thereof, fined not exceeding fifty dollars.

§ 3. Be it further enacted, That this act take effect from and after its passage.

(Approved March 25, 1887.)

See § 2768, and cross-references. Protection of employes against Insolvency Act.

Act 3.

AN ACT to define the powers of corporations.

Section 1. Be It enacted by the general assembly of the State of Tennessee—

First—That any company incorporated under the laws of this State having, by its charter, the right to receive moneys in trust or otherwise, shall be held to have, and shall have, the power, after the passage of this act, to receive deposits and loan the same and its capital on any kind of a commercial or business paper or real estate, buy and sell exchange, and all kinds of public or private securities and commercial paper.

Second — That the exercise of any of the foregoing powers by any corporation created or incorporated or chartered under the laws of this State, shall not operate to forfeit or effect any franchise, right, power, privilege, or immunity granted to such corporation in and by its charter.

Third — That the non-user of any company incorporated in this State of a part of its power, privileges, or franchises, shall not have the effect to forfeit or to affect any franchise, right, power, privilege, or immunity contained in its charter.

§ 2. Be it further enacted, That the public welfare requiring it, this act shall take effect from and after its passage.

(Approved March 26, 1887.)

See § 1704.

Act 4.

AN ACT to prevent joint-stock companies, associations, and corporations organized or chartered under the laws of this State, or doing business or operated in this State, from impairing or infringing upon the rights, privileges, and liberties of their servants and employes.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That it shall be unlawful for any joint-stock

Rights of employes; disposition of franchises — Acts, March 26 and 28, 1887.

company, association, or corporation, organized, chartered, or incorporated by and under the laws of this State, or operated or doing business in this State under its laws, either as owner or lessee, having persons in their service as employes, to discharge any employe or employes, or to threaten to discharge any employe or employes in their service for voting or for not voting in any election, State, county, or municipal, for any person as candidate or measure submitted to a vote of the people, or to threaten to discharge any such employe or employes for trading or dealing, or for not trading or dealing as a customer or patron with any particular merchant or other person or class of persons in any business calling, or to notify any employe or employes either by general or special notice, directly or indirectly, secretly or openly given, not to trade or deal as customer or patron with any particular merchant or person or class of persons, in any business or calling, under penalty of being discharged from the service of such joint-stock company, corporation or association doing business in this State as aforesaid.

§ 2. Be it further enacted, That any joint-stock company, association, or corporation organized, chartered, or incorporated under the laws of this State or operated in this State violating any of the provisions of the foregoing section, shall be guilty of a misdemeanor, and on conviction shall pay a fine of not less than one hundred dollars and not more than one thousand dollars, for each offense for which convicted.

§ 3. Be it further enacted, That any person acting as an officer or agent of any joint-stock companies, associations, or corporations of the kind and character hereinbefore described, or for any one of them, who makes or executes any notice, order, or threat of the kind and character hereinbefore forbidden, shall be guilty of a misdemeanor, and on conviction shall pay a fine of not less than one hundred dollars and not more than five hundred dollars, and be imprisoned in county jail not less than ten days nor more than three months.

(Approved March 26, 1887.)

See § 2768, and cross-references.

Act 5.

AN ACT to empower corporations to lease and dispose of their property and franchises.

Section 1. Be it enacted by the general assembly of the State of Tennessee. That all corporations now or hereafter existing under the laws of this State, whether incorporated under special or general laws of the State, shall have the power, and they are hereby authorized and empowered, to lease and dispose of their property and franchises, or any part thereof, to any cor-

poration of this or any other State engaged in or carrying on, or authorized by its charter to carry on in this or any other State the same general business as is authorized by the charter of any such lessor corporation; and said corporations shall likewise have the power, and are hereby authorized, to make any contract for the use, enjoyment, and operation of their property and franchises, or any part thereof, with any such other corporation of this or any other State, on such terms and conditions as may be agreed upon between the contracting corporations; and such lessee corporation or corporations is authorized and empowered to make and carry out such leases and contracts; Provided, however, That any such leases or contracts, when made by or under the direction of the boards of directors of the contracting corporations, shall be authorized or approved by the vote of a majority, in amount, of the stock of the lessor corporation present or represented at a regular or called meeting of the stockholders of said corporation; And provided further, That sixty days' notice of such meeting be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of such meeting; And provided further, That where the lessee corporation is a corporation of this State, the authority or approval of its stockholders shall in like manner be obtained to the contract or lease; And provided further, That this act shall not be so construed as to authorize any corporation of this or any other State to lease or purchase any railroad and line that is a competitor for the same business with any line already owned or under control, by lease or otherwise, or two lines of railway that are competitors for the same business in this State.

§ 2. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved March 28, 1887.)

See § 1704, subd. 3.

Act 6.

AN ACT to amend the statute embraced in sections 1720 and 1721, Milliken & Vertrees' Code.

Section 1. Be it enacted by the general assembly of the State of Tennessee. That the statute embraced in sections 1720 and 1721 of Milliken & Vertrees' Code be so amended as to allow all corporations whose charters expire or have expired by their own limitation, and who exist by virtue of said statute for the term of five years after said expiration, for the purpose of prosecuting or defending suits by or against them, settling their business, disposing of their property, and dividing their capital stock, to continue the corporate business for which

Foreign corporations, etc.—Acts, March 29, 1887.

they were created during the said term of five years, but no longer.

§ 2. Be it further enacted, That all such corporations shall, during the term of five years mentioned in the first section of this act, but no longer, possess all powers, rights, and privileges conferred upon them, and shall, during said period, be subject to all penalties and restrictions of their original charters.

§ 3. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved March 28, 1887.)

Act 7.

AN ACT to subject foreign corporations to suit in this State.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That any corporation claiming existence under the laws of any other State, or of any country foreign to the United States found doing business in this State, shall be subject to suit here, to the same extent that corporations of this State are, by the laws thereof, liable to be sued so far as relates to any transaction had in whole or in part within this State, or any cause of action arising here, but not otherwise.

§ 2. Be it further enacted, That any corporation having any transaction with persons or having any transaction concerning any property situated in this State, through any agency whatever, acting for it within the State, shall be held to be doing business here within the meaning of this act.

§ 3. Be it further enacted, That process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this State were sued, and the process has been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees for which shall be taxed as other costs. The clerk shall file with the papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon

the docket, and no judgment shall be taken in the case until thirty (30) days after the date of such mailing.

§ 4. Be it further enacted, That it shall be the duty of the plaintiff to lodge at the home office of the company, with any person found there, a written notice from him or his attorney, stating that such suit has been brought, accompanied by a copy of the process and the return of the officer thereon, of which fact affidavit shall be made by the person lodging the same, stating the facts and with whom the notice was lodged, or else the plaintiff or his attorney shall make an affidavit that he has been prevented from serving such notice by circumstances which should reasonably excuse giving it, which circumstances the affidavit of the plaintiff or his attorney shall particularly state; and no judgment shall be taken until one or the other of these affidavits shall be filed and the court be satisfied that the notice has been given the defendant, or that the excuse for not doing so be sufficient.

§ 5. Be it further enacted, That this act take effect from and after its passage, the general welfare requiring it.

(Approved March 29, 1887.)

Service of summons on corporation. §§ 3536-3539. See § 1704, subd. 1, and cross-references.

[Above act does not apply to a non-resident corporation having a local office and resident agent in the State and already subject to suit, but only to such as engage in business in the State without such office and agent. *Telephone Co. v. Turner*, 88 Tenn. 265; s. c., 12 S. W. Rep. 544. It does not limit, but enlarges, the exercise of jurisdiction over foreign corporations by said courts, and does not repeal or modify any pre-existing law on the subject. *Id.* The Code provisions covered every case where a foreign corporation had a local office and resident agent. It did not cover the case where business was done through traveling agents. *Telephone Co. v. Turner*, 88 Tenn. 269; s. c., 12 S. W. Rep. 544; *R. R. Co. v. Walker*, 9 Lea, 475. Statutes cannot be obnoxious to any constitutional objection which prescribe terms upon which foreign corporations shall enter the State or which exclude them altogether. *Dugger v. Ins. Co.*, 95 Tenn. 246; s. c., 32 S. W. Rep. 5.

Attachment of property of foreign corporation after application for receiver allowed, when. *Bank v. Motherwell, etc., Co.*, 35 Tenn. 172; s. c., 31 S. W. Rep. 1002.

A bill by a foreign corporation doing business in the State should be dismissed, it not being shown that it had complied with the statute as to filing. *Land Co. v. Lumb, Co.*, 35 S. W. Rep. 881. Allegations of a bill held sufficient to charge a foreign corporation with a violation of a statute. *Mfg. Co. v. Wetsell*, 35 S. W. Rep. 806.]

Act 8.

AN ACT to compel all firms, corporations, companies that are engaged in mining, manufacturing, or any other business, that use scrip or checks, to redeem their own scrip or checks in lawful currency of the United States at least once every thirty days.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That from and after the passage of this act it

Increase of shares; trusts and combines — Acts, March 20 and April 6, 1889.

shall be unlawful for any person or persons, firms, or corporations, or companies to refuse to cash any checks or scrip of their own that may be presented it within thirty days of its date of issuance.

§ 2. Be it further enacted, That any person or persons, firms, companies, or corporations who shall refuse to redeem in lawful currency any such checks or scrip, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than twenty-five dollars for each offense; Provided, That this act shall not be construed as authorizing or legalizing the issuance of scrip.

§ 3. Be it further enacted, That all laws conflicting with this act be, and the same are hereby, repealed, and that this act take effect from and after its passage, the public welfare requiring it.

(Approved March 29, 1887.)

See Act of 1891, at p. 31.

Act 9.

AN ACT allowing any corporation created by the laws of Tennessee to increase the value of its shares.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That any corporation hereafter created, or hereafter to be created under the laws of the State of Tennessee, may make a share of stock one hundred dollars, or less, and issue certificate therefor.

§ 2. Be it further enacted, That any such corporation which has heretofore issued shares of stock for twenty-five dollars, may call in the same, and combine four such shares and issue a certificate for one hundred dollars in lieu.

(Approved March 20, 1889.)

General powers of corporation. § 1704. See Act 22.

Act 10.

AN ACT to prevent conspiracies and formations of trusts against legitimate trade and commerce, and to suppress illegal combinations against the same.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That it shall not be lawful for any person or persons, or associations of persons, or any corporation in this State, or doing business in this State, to form, or agree to, or to conspire to form any trust, pool, or corner or combination, or any other arrangement or device, in or about any article of legitimate traffic, the production or manufacture or sale of such article that may injuriously affect, and for the purpose of injuriously affecting the legitimate trade and commerce of the

county, or to limit the supply or production of said articles, whereby the price of such produce or manufactured articles, or other articles of legitimate trade may be unduly depressed and put down, or unduly raised or increased, for the purpose of speculation, either by pooling or purchasing said articles for the purpose of withdrawing them from market to destroy legitimate competition, or to create a monopoly or corner in the same, or to produce an undue demand for the same, and that to unduly raise the price of said articles, or by throwing the same on the market when so accumulated or purchased for the purpose of creating an undue depression in the price of such article, and by such means to destroy or limit legitimate competition in the production, manufacture, or sale of such articles, as by any other device or arrangement for such purpose. All such agreements, trusts, pools, corners, and combinations are hereby prohibited: Provided, Nothing herein contained shall be construed to prevent or interfere with parties engaged in legitimate trade and speculation.

§ 2. Be it further enacted, That any person or persons or corporation violating the first section of this act, for the first offense, shall, on conviction, pay a fine of not less than two hundred and fifty dollars, and for the second offense a fine of not less than five hundred dollars, and the attorney-general, for each conviction, shall have a taxed fee of fifty dollars, and shall have, in addition, fifty per cent. of the money actually received on such fine, and he shall prosecute all such cases, ex officio, without any other prosecutor, and the courts shall give this act in charge and the grand jury shall have full inquisitorial power in such cases.

§ 3. Be it further enacted, That no contract made by any person or persons or corporations, whereby to carry out, or agree to carry out, any of the agreements or combinations enumerated in and prohibited in the foregoing act, shall be enforced in any of the courts of this State whether the same be made by citizens of this or any other State.

§ 4. Be it further enacted, That any corporation created or incorporated by or under the laws of this State, which violates any provisions of this act, shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine, and it shall be the duty of the attorneys-general of the State, of their own motion and without leave or order of any court or judge, to institute an action in behalf of the people and in the name of the State for the forfeiture of such rights and franchises, and the dissolution of such corporate existence, or any citizen of the State, may institute such suit by proceedings in a court of chancery in the name of the State, and said corporations may be enjoined from violation of this act, pending such proceed-

Validation of charters; foreign corporations — Acts, March 10, 1890, March 10 and 26, 1891.

ings, provided such citizen may not begin such proceedings without giving security for cost in such cases.

(Approved April 6, 1889.)

See Const., art. I, § 22; Acts of 1891 and 1897, at pp. 30, 35.

Act 11.

AN ACT to make valid articles or charters of incorporation heretofore taken out under the general incorporation laws of Tennessee, and acknowledged before notaries public, and make valid all proper and otherwise lawful acts and contracts done pursuant thereto.

Whereas, Many charters or incorporations have heretofore been taken out under the general incorporation laws of this State and acknowledged before notaries public instead of county court clerks, and companies organized, and business of great magnitude transacted thereunder; and,

Whereas, It was ruled and determined by the secretary of State that such acknowledgments were good and valid, and for many years all charters so acknowledged have been duly registered and recorded in the secretary of State's office and the county registers, as required by law; and,

Whereas, The validity of such charters has recently been brought in question to the great peril of important and established business interests; now, therefore,

Section 1. Be it enacted by the general assembly of the State of Tennessee, That all charters or articles of incorporation heretofore taken out under the general corporation laws in this State which were or have been acknowledged or proven before notaries public, are hereby ratified and confirmed, and shall have and possess the same validity and effect as if they had been acknowledged or proven before a county court clerk; and the acts, contracts and obligations of all such corporations so organized shall have and possess the same validity, force and effect as if the charters of such corporations had been acknowledged before the county court clerks.

§ 2. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved March 10, 1890.)

See general provisions. § 1391.

Act 12.

AN ACT to amend an act entitled "An act to declare the terms on which foreign corporations, organized for mining or manufacturing purposes, may carry on their business and purchase, hold and convey real and personal property," chapter 31 of acts of 1877, sections 1992 to 2003 of Milliken & Vertrees' compilation of the laws of Tennessee.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That chap-

ter 31 of the acts of the general assembly of Tennessee for the year 1877, being sections 1992 to 2003 of Milliken & Vertrees' compilation of the laws of Tennessee, be so amended as to apply to corporations chartered under the laws of other States known as "Building and Loan Associations," "Bond and Investment Companies," "Real Estate, Land, Labor and Immigration Companies," "Co-operative Associations or Companies," "Cotton Compress and Warehouse Associations or Companies," "Electric Light, Gas and Electric Power, Gas Power and Steam Power Companies," "Stock Yards," "Cold Storage and Packing Companies," "Water-works" and "Wrecking and Salvage Companies."

§ 2. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Passed March 10, 1891.)

See Act of 1895, at p. 32.

Act 13.

AN ACT to amend chapter 31 of the acts of 1877,* declaring the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold and convey real and personal property in this State, so as to make the provisions of said act apply to all foreign corporations that may desire to own property or to do business in this State.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That chapter 31 of the acts of 1877 be so amended and enlarged as that the provisions of said act shall apply to all corporations chartered or organized under the laws of other States or countries for any purpose whatsoever which may desire to do any kind of business in this State.

§ 2. (As amended April 27, 1895.) Be it further enacted, That each and every corporation created or organized under, or by virtue of, any government other than that of the State, for any purpose whatever, desiring to own property, or carry on business in this State of any kind or character, shall first file, in the office of the secretary of State, a copy of its charter. It shall be sufficient to authenticate such copies so filed by the certificate of the secretary, or secretaries, of such corporations, and by attaching thereto the corporate seal.

§ 3. (As amended April 27, 1895.) Be it further enacted, That it shall be unlawful for any foreign corporation to do business, or attempt to do business, in this State without first having complied with the provisions of this act, and a violation of this statute shall subject the offender to a fine of not less

Foreign corporations; trusts and combines — Acts, March 26 and 30, 1891.

than \$100.00 nor more than \$500.00, in the discretion of the jury trying the case.

§ 4. (As amended April 27, 1895.) Be it further enacted, That when a corporation complies with the provisions of this act, said corporation may then sue and be sued in the courts of this State, and shall be subject to the jurisdiction of this State as fully as if it were created under the laws of the State of Tennessee; Provided, That this act shall not affect any contracts or remedy heretofore made by foreign corporations not having complied with the existing laws on the subject.

§ 5. Be it further enacted, That when such corporation has no agent in this State upon whom process may be served by any person bringing suit against such corporation, then it may be proceeded against by an attachment to be levied upon any property owned by the corporation, and publication, as in other attachment cases. But for the plaintiff to obtain an attachment he, his agent or attorney, need only make oath of the justness of his claim, that the defendant is a corporation organized under this act, and that it has no agent in the county where the property sought to be attached is situated upon whom process can be served.

§ 6. Be it further enacted, That said chapter 31 of the acts of 1877, except in so far as the same is amended, enlarged and extended by this act, be and the same is declared to be in full force.

§ 7. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved March 26, 1891.)

See Act of 1895, at p. 32, and cross-references.

[The above act is constitutional and valid. *Lumber Co. v. Thomas*, 92 Tenn. 587; s. c., 22 S. W. Rep. 743; *State v. Ins. Co.*, 92 Tenn. 420; s. c., 21 S. W. Rep. 893. And applies to foreign corporations. *Id.* Its chief purpose was not to confer new privileges, but to impose restrictions upon foreign corporations. *State v. Ins. Co.*, 92 Tenn. 432; s. c., 21 S. W. Rep. 893. The contracts of foreign corporations, which were entered into in this State since the passage of, and were in compliance with above provisions, were held illegal and not enforceable in *Lumber Co. v. Thomas*, supra. But see now the Act of 1895, at p. 32, validating such contracts. Where suit was brought by the foreign corporation prior to passage of above act, and it not appearing that it has not complied with the act, its right to maintain the action cannot be questioned on that ground. *L. & N. R. R. Co. v. M. & T. R. R. Co.*, 92 Tenn. 693; s. c., 22 S. W. Rep. 920. Although a foreign corporation has not complied with the provisions of above act, its acts are interstate commerce and are valid, and enforceable. *Milan, etc., Co. v. Gorton*, 93 Tenn. 590; s. c., 27 S. W. Rep. 971.

Bill by foreign corporation on drafts accepted by defendant held not subject to plea in abatement for failure to register charter as required by above act. *Brewing Co. v. Levisy*, 37 S. W. Rep. 889.

Evidence examined, and held error to disallow a claim of a foreign corporation against an insolvent domestic corporation. *Alabama, etc., Co. v. Chattanooga, etc., Co.*, 37 S. W. Rep. 1004.]

Act 14.

AN ACT to declare unlawful all trusts, pools, contracts, arrangements and combinations in the restraint of trade, production, manufacture or sale, to fix the liability of and punish persons and corporations concerned therein.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That all trusts, pools, contracts, arrangements or combinations now existing or hereafter made with a view or which tend to prevent full and free competition in the production, manufacture or sale of any article of domestic growth, production or manufacture, or in the importation or sale of any article grown, produced or manufactured in any other State or country or which are designated or tend to fix, regulate, limit or reduce the price of any article of growth, production or manufacture, or which are designed or tend in a way to create a monopoly, are hereby declared to be unlawful, against public policy and void.

§ 2. Be it further enacted, That all persons entering into or continuing in any trust, pool, contract, arrangement, agreement or combination, either in his own account, or as agent or attorney for another, or as an officer, agent or stockholder of any corporation, or in any capacity whatever, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred (\$500) dollars nor more than five thousand (\$5,000) dollars, and imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

§ 3. Be it further enacted, That all persons and corporations and the officers and the stockholders of all corporations that shall become or continue to be members of, or in any way connected with, or concerned in any such trust, contract, agreement or combination, shall be jointly and severally liable to pay all the debts, obligations and liabilities of each and every person and corporation that may become or continue a member thereof, connected therewith or concerned therein, as fully as if all were partners in the creation of such debts, obligations and liabilities.

§ 4. Be it further enacted, That if any corporation organized under the laws of this State, or any officer or stockholder thereof, as such, shall become or continue to be a member of any such trust, pool, contract, agreement, arrangement or combination, its charter shall become and be hereby forfeited, and it shall be the duty of the attorney-general of the county where the same is located or having its principal office, to bring suit against such corporation in the circuit court of such county, to have its said charter declared forfeited for that reason,

Trusts and combines; payment of wages — Acts, March 30 and September 16, 1891.

and to wind up the same under the order of such courts.

§ 5. Be it further enacted, That when action at law or suit in equity shall be commenced in any court of this State it shall be lawful in the defense thereof to plead in bar or in abatement of the action that the plaintiff or any other person or corporation interested in the prosecution of the action is a member or connected with and the cause of action grows out of some business or transaction with such trust, pool, contract, agreement, arrangement or combination, as described in the first section of this act.

§ 6. Be it further enacted, That any person or corporation injured or damaged by any such trust, pool, contract, agreement, arrangement or combination may sue and recover fines in any court of competent jurisdiction, double the amount of damages suffered by such person or corporation.

§ 7. Be it further enacted, That upon the trial of any civil action against any corporation, person or copartnership for a violation of any section of this act, all officers, stockholders and agents of such corporation, person or copartnership shall be competent witnesses against the defendant as such on trial, and such officers, stockholders and agents may be compelled to testify against such defendant, and produce all books and papers in their custody or control pertinent to the issues in such action at or before the time of trial, and shall not be excused from producing any books or papers, because the same might tend to criminate such witnesses, but nothing which such witness shall testify to, and no books or papers produced by him shall in any manner be used against him in any criminal action to which he is a party.

§ 8. Be it further enacted, That all acts and parts of acts of the general assembly of the State of Tennessee in conflict with this act be and the same are hereby repealed.

§ 7. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved March 30, 1891.)

See Act of 1889, at p. 28; Const., art. I, § 22. Above act is repealed by implication by Laws 1897, chap. 94. See p. 35. It is included to show progress of this legislation.

Act 15.

AN ACT to compel all persons, firms, corporations and companies that are engaged in constructing railroads, or in mining or manufacturing, to settle with their laborers and employes at regular intervals, and pay them in lawful money of the United States, and to punish a violation of same.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That all persons, firms, companies, or corporations engaged in constructing and building rail-

roads, or in mining coal, ore, or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their laborers and employes the amounts due them for their work or service in lawful money of the United States, or by cash order as described and required in section 2 of this act; and shall adjust accounts with their laborers and employes at least once in every thirty days; Provided, That if the employer and employe fail in their adjustment to agree upon the amount due the laborer, and the courts have to settle the question in controversy, the penalty herein provided shall not apply; Provided, That nothing herein contained shall affect the right of such laborer or employe to assign, in whole or in part, his claim against his employer.

§ 2. Be it further enacted, That it shall not be lawful for any person, firm, company, or corporation engaged in the business set forth in section 1 of this act, or for their clerk, agent, officer, or servant, to issue for payment of labor any order or other paper whatever, unless the same purports to be redeemable for its face value in lawful money of the United States, bearing interest at legal rate, made payable to employe or bearer, and redeemable by the person, firm, company, or corporation giving, making, or issuing the same; and any person, firm, company, or corporation engaged in the business aforesaid, their clerks, agents, officers, or servants who shall be guilty of a violation of section 1 or 2 of this act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding two hundred dollars and not less than fifty dollars, in the discretion of the court.

§ 3. Be it further enacted, That all laws in conflict with this act be, and the same are hereby, repealed, and that this act take effect from and after its passage, the public welfare requiring it.

(Approved September 16, 1891.)

See Act of 1887, at p. 25. See Act 20.

Act 16.

AN ACT to repeal certain laws authorizing amendments of charters.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That the act, entitled "An act to permit incorporated companies chartered by the chancery courts or under the acts of 1870, approved March 23, to amend their charters in the manner provided by law for amending charters of incorporations granted by the legislature," passed March 23, 1883, and approved March 27, 1883, be, and the same is hereby, repealed.

§ 2. Be it further enacted, That any persons organized as a corporation under a charter granted by any of the chancery

Amendments of charters; foreign corporations — Acts, April 7, 1893, and May 10, 1895.

courts of this State, who at any time before the final dissolution of such corporation as now provided by law, may desire to amend their charter for the purpose of continuing corporate existence, and becoming vested with all the powers, rights, and privileges granted, and becoming subject to all of the penalties, limitations, and restrictions imposed by the act, entitled "An act to provide for the organization of corporations, passed March 19, 1875, and approved March 23, 1875," and all subsequent amendments thereof, in lieu and in place of the powers, rights, and privileges granted, and the penalties, limitations, and restrictions imposed by their original chancery court charters, shall have the rights so to do by the board of directors of such corporation making an application in these words: "We the undersigned, composing the board of directors of here insert name of corporation hereby apply to the State of Tennessee, by virtue of the laws of the land, for an amendment to the charter of said granted by the court, county, Tennessee, whereby said corporation may continue its existence, and become vested with all of the powers, rights, and privileges granted, and be and become subject to all of the penalties, limitations, and restrictions imposed by the act, entitled 'An act to provide for the organization of corporations,' passed March 19, 1875, approved March 23, 1875, and all subsequent amendments thereof, in lieu and in place of the powers, rights and privileges granted, and the penalties, limitations, and restrictions imposed by the original charter granted to said company by the chancery court of county, Tennessee. Witness our hands, this day of 189.. ." To be signed by all of the directors.

§ 3. Be it further enacted, That the said application for amendment shall be probated or acknowledged and recorded as provided by the said act of 1875, chapter 142, sections 3 and 26, as in the case of applications for original charters; and the certificate of registration given by the secretary of State, under the great seal of the State, shall, when recorded as required, complete the act of amendment, and the validity thereof shall not in any legal proceedings be collaterally impeached or questioned, and said corporation shall thereafter continue to exist in the same manner as if it had been originally chartered under said act, entitled "An act to provide for the organization of corporations," passed March 19, 1875, approved March 23, 1875, and the amendments of said last-named act, and shall have the same powers, rights and privileges, and none other, and be subject to the same penalties, limitations, and restrictions, and none other, as if it had been originally chartered under said act and its amendments; nor shall it thereafter be subject to any of the penalties, limitations, and restrictions imposed upon it by its chan-

cery court charter, saving and excepting such as are embraced in and imposed by said act of 1875, being chapter 142, approved March 23, 1875, and subsequent amendments thereof.

§ 4. Be it further enacted, That the fees of the secretary of State, registers, and county court clerks, for the registration, probate, and acknowledgment of the amendments herein provided for shall be the same as provided in the case of original charters by the said acts of 1875.

§ 5. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved April 7, 1893.)

See §§ 1695, 1711.

Act 17.

AN ACT to postpone the foreclosure of certain mortgages or trust deeds, and to validate contracts heretofore made by foreign corporations in this State, where such corporations failed to comply with the requirements of chapters 95 and 122 of the acts of 1891,* and chapter 31 of the acts of 1877,* providing that any such corporation desiring to own property or to carry on business in this State shall file a copy of its charter in the office of the secretary of State, and cause an abstract of the same to be recorded in the office of the register in each county in which such company desires to carry on business or own property.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That the contracts of any foreign corporation created or organized by any State or government, other than that of this State, that has heretofore engaged in business, made contracts, or purchased property in this State after the passage of said chapters 95 and 122 of the acts of 1891, without first complying with the provisions of the same, shall be as valid and binding in all respects as if a copy of its charter had been filed with the secretary of State and an abstract of same filed in each county where such corporation carried on business or made contracts; Provided, That this section shall apply only to such foreign corporations as have already, in good faith, complied with the provisions of said chapters 95 and 122 of the acts of 1891, and chapter 31 of the acts of 1877, by filing a copy of its charter with the secretary of State, and recording abstracts thereof in each county in which such corporation carried on business or made contracts, or shall, within four months after the passage of this act, so file such charter and abstracts of same; Provided, however, That no mortgage or deed of trust executed to a foreign cor-

*§§ 1902 et seq. Above act is amended by Laws 1897, chap. 25. See Act, at p. 38.

Organization tax; charter amendment — Acts, June 17, 1895, and February 10, 1897.

poration, or to a trustee to secure indebtedness to a foreign corporation upon real estate in this State, where such foreign corporation had not complied with the laws of this State at the time such mortgage or deed of trust was executed shall be foreclosed, either under a power of sale or judicial decree, until two years after the passage of this act, but no alien corporation owning land in the State shall have the benefit of this stay of foreclosure proceedings.

§ 2. Be it further enacted, That in settlements made under this act, not more than six per cent. on the amount actually received by the parties, shall be collected, but notes signed in this State, and payable in this State, but wholly secured by deeds of trust or mortgages on land in other States, shall be enforceable for the amount of interest permitted in the State where the land is located.

§ 3. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved May 10, 1895.)

See Acts of 1891, at p. 29, and § 1704, subd. 3, and cross-references; § 1993.

Act 18.

AN ACT to provide revenue for the State of Tennessee, and the counties thereof.

* * * * *

§ 13. Be it further enacted, That every corporation, joint-stock company, or association, incorporated by or under any general or special law of this State, having capital stock divided into shares, shall pay to the secretary of State, for the use of the State, which shall be reported to the comptroller quarterly, a tax for the privilege of organizing, or, after organization, for the increase of their capital stock, or for registration of their charter, as follows:

Railroads over 100 miles.....	\$100 00
Railroads of less than 100 miles.....	50 00
Street and dummy lines.....	50 00
Banks, building and loan associations, loan companies, trust companies, coal or coke companies, iron or steel companies,	25 00
All other corporations	10 00

(But this shall not apply to corporations for literary or religious purposes.)

The said tax shall be due and payable upon the incorporation of said corporation, joint-stock company or association, or upon the increase of the capital stock thereof, or upon registration of charter; and no such corporation, joint-stock companies or associations shall have or exercise any corporate powers until the said tax shall have been paid, and the secretary of State shall not file or record any charter, certificate of incorporation, or articles of as-

sociation, or certify or give any corporation, joint-stock company or association, until the foregoing tax has been paid; and no such company incorporated by any act of the legislature, shall go into operation or exercise any corporate powers or privileges until said tax has been paid; and this act shall not be so construed as to levy a tax on the corporation of any school, or upon purely and wholly religious corporations.

§ 19. Be it further enacted, That all laws and parts of laws in conflict with this act, be and the same are hereby repealed, and that this act take effect forty days after its passage.

(Approved June 17, 1895.)

Capital stock liable to taxation. § 1698. See § 1703; Act of 1897, at p. 36.

Act 19.

AN ACT to permit incorporated companies chartered under the act entitled "An act to provide for the organization of corporations," passed March 19, 1875, approved March 23, 1875, or under any acts amendatory or subsequent thereto, to amend their charters in the manner provided by law for amending charters of incorporations granted by the legislature, and to legalize and declare valid amendments to charters made under the act of 1883, since the repeal of that act by the act of 1893.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That the stockholders of any corporation, organized under a charter obtained under the provisions of the act entitled "An act to provide for the organization of corporations," passed March 19, 1875, approved March 23, 1875, and being chapter 142 of the acts of 1875, or organized under a charter obtained under any act amendatory to said act or subsequent thereto, who may desire to change the name of such corporation, increase its capital stock, or obtain any power granted either by said chapter 142 of the acts of 1875, or by any act amendatory or subsequent thereto, shall have the right to do so under and in the manner provided by section 19 of said chapter 142 of the acts of 1875, which provides for the amendment of charters granted by the legislature, and with the like effect as therein provided; Provided, That this act shall in no way apply to or affect corporations where suits have already been brought to declare their charters void, and shall have no effect in any kind of litigation or suits now pending against such corporations, for any purpose. "All amendments to charters under the act passed March 23, approved March 27, 1883, being chapter 163 of said acts, procured since the repeal of said act of 1883, by the act passed March 3, 1893, approved April 7, 1893, being chapter 146, of said acts of

Employees; election funds; privilege tax — Acts, February 10, April 29 and 30, 1897.

1893, be, and the same are hereby, legalized and declared valid."

§ 2. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved February 10, 1897.)

See § 1695.

Act 20.

AN ACT to amend chapter 18 of the acts of 1883, entitled "An act to protect employes and day laborers of corporations and partnership firms against the insolvency of such corporations and firms, and to give laborers and employes of corporations and firms a first lien upon corporate and partnership property for services."

Section 1. Be it enacted by the general assembly of the State of Tennessee, That chapter 18 of 1883, be so amended as to read as follows: That hereafter all employes and laborers of any corporation or partnership firm doing or carrying on any corporate or partnership business within the State of Tennessee, shall have a lien upon the corporate or firm property of every character and description, for any sums due them for their labor and service performed for such corporation or partnership, and that such lien shall prevail over all other liens, except the vendor's lien or the lien of a mortgage, or deed of trust to secure purchase money, and other liens created before the passage of this act.

§ 2. Be it further enacted, That no corporation or partnership doing business in this State, shall have the power to execute a mortgage or deed of trust or other instrument creating a prior lien upon the property of such corporation to that hereby created in favor of the employes and laborers, except to secure purchase money. The lien herein created however shall only extend to and protect such claims as may have accrued within three months of the bringing of any suit for the enforcement thereof, and shall continue during the pendency of any suit brought for its enforcement, and the same may be enforced by attachment as mechanic's liens are enforced.

§ 3. Be it further enacted, That this act take effect at and from its passage, the public welfare requiring it.

(Approved February 10, 1897.)

See §§ 2768-2770.

Act 21.

AN ACT to prohibit the use of funds belonging to corporations for electioneering, political or campaign purposes, and to punish all representatives of corporations who so use or consent to the use of corporate funds for this purpose.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That it

shall be unlawful for the executive officers or other representatives of any corporation doing business within this State, to use any of the funds, moneys or credits of the corporation for the purpose of aiding either in the election or defeat of any candidate for office, national, State, county or municipal, or for the purpose of aiding in the success or defeat of any proposition submitted to a vote of the people, or in any way contributing to the campaign fund of any political party, for any purpose whatever.

§ 2. Be it further enacted, That every executive officer, agent, or other representative of any corporation, doing business within this State, who shall knowingly consent to, approve, or aid in the use of the fund of a corporation, for any of the purposes mentioned in section 1, of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars, nor more than two thousand dollars, and shall be imprisoned in the county jail or workhouse not less than two nor more than six months.

§ 3. Be it further enacted, That the grand juries of this State shall be given inquisitorial powers over all violations of this act, and that the circuit and criminal court judges of this State be required to give this matter specially in charge to the grand jury at each term of their courts.

§ 4. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved April 29, 1897.)

Act 22.

AN ACT to require applicants for charters of incorporation, or amendments thereto, to fix the amount of the capital stock of the corporation for which charter is sought in the charter or amendment, and to pay a privilege tax upon the charter, graded by the amount of capital stock.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That all persons applying to the State of Tennessee for any charter of incorporation to be organized for profit shall fix in the charter applied for the amount of the capital stock of the proposed incorporation and any corporation already chartered or that may hereafter be chartered making application for an amendment to its charter shall on such amendment fix the proposed increase of the capital stock, and no corporation now or hereafter created shall increase its capital stock except by an amendment to its charter, which amendment shall be made in the manner now or hereafter provided by law. And all persons applying for charters of incorporation, and all corporations applying for amendments to their charters shall pay to the secretary of State as a privilege tax for the granting of such charter or amendment one-tenth of one per centum upon the capi-

Trusts and combines — Act, April 30, 1897.

tal stock so fixed in the charter applied for or upon the increase of the capital stock sought to be made by the amendment to the charter; and the secretary of State shall not grant any charter or any amendment increasing the capital stock unless said privilege tax is paid, and he shall account for and pay into the treasury of the State all moneys so received by him monthly, making a report under oath of the amount so collected.

§ 2. Be it further enacted, That the privilege tax herein provided for shall be in lieu of all other privilege taxes upon granting charters of incorporations or amendments thereof; and that this act take effect from and after its passage, the public welfare requiring it.

(Approved April 30, 1897.)

Act 23.

AN ACT to declare unlawful and void all arrangements and contracts, agreements, trusts or combinations made with a view to lessen or which tend to lessen free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangement, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or articles to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this act; to prohibit every foreign corporation violating any of the provisions of this act from doing business in this State; to require the attorney-general of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damages, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Tennessee, and it is hereby enacted by the authority of the same, That from and after the passage of this act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all

arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend, to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Be it further enacted, That any corporation chartered under the laws of the State which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation, which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the attorney-general of this State to enforce the provisions by due process of law.

§ 3. Be it further enacted, That any violation of the provisions of this act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders made in furtherance of such conspiracy, shall, upon conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year nor more than ten years; or in the judgment of the court, by either such fine or imprisonment.

§ 4. Be it further enacted, That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. Be it further enacted, That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for, and recover, in any court of competent jurisdiction in this State, of any person or persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

§ 6. Be it further enacted, That it shall be the duty of the judge of the circuit and criminal courts of this State specially to instruct grand juries as to the provisions of this act.

§ 7. Be it further enacted, That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

§ 8. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

(Approved April 30, 1897.)

Act 24.

AN ACT to provide more just and equitable laws for the assessment and collection of revenue for State, county and municipal purposes, and to repeal all laws in conflict with the provisions of this act whereby revenue is collected from the assessment of real estate, personal property, privileges and polls.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That all property, real, personal and mixed, shall be assessed for taxation, for State, county and municipal purposes, except such as is declared exempt in next section.

* * * * *

§ 7. Be it further enacted, That personal property shall be assessed under the following heads:

(1) The actual stock in each bank or banking, insurance, or other stock company or corporation, invested in business.

* * * * *

§ 8. Be it further enacted, That no tax shall hereafter be assessed upon the capital stock of any bank or banking association, or loan, trust, insurance, or investment companies, or cemeteries, or any other corporation not accessible under sections 13 and 14 under this act, organized under the authority of this State or of the United States; but the stockholders in such bank or banking, or other association, shall be assessed and taxed upon the market value of their shares of stock therein. Such shares of stock shall be included in the valuation of personal property of such stockholder in the assessment of the State, county and municipal taxes at the place, town or ward, or district where such bank or banking or other association is located, except as otherwise provided by law, whether such stockholder resides in said place, town, ward or district or not. In ascertaining the value of the shares of stock, the real estate owned by the corporation shall not be taken into consideration, but such real estate shall be assessed to the corporation, and the taxes paid by it; but all other property of the corporation shall be taken into consideration in fixing the value of the shares of stock.

§ 9. Be it further enacted, That the president or business manager of any bank or banking association or other corporation included in the provisions of section 8 of this act, doing business under the laws of this State, is hereby required to declare, upon oath, before the assessor, the amount of capital invested in such business; and each one hundred dollars' worth of such capital, for the purpose of this act and for the purpose of taxation, shall be held and regarded as one individual share in such bank or banking association; and such shares are declared to be personal property. If such president or business manager have partners, he shall declare, upon oath, before the

assessor, the number of shares held or owned by each of them in such business, ascertained as above provided; and the shares so held by any partner shall be included in the valuation of his personal property in the assessment of all taxes levied in the city, town, ward, or civil district where such business is located, except herein otherwise provided; and said president or business manager shall pay the same, and make the amount so paid a charge in his account to said partners; and if said president or business manager have no partners, he shall be held to be sole owner of all the shares in said business, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied, in the city, town, ward or district where said business is located, except as herein otherwise provided.

§ 10. Be it further enacted, That there shall be kept at all times in the office where the business of such bank or banking association or other corporations included in the provisions of section 8, of this act, organized under the authority of this State, or of the United States, shall be transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes, during the business hours of each day on which business may be legally transacted.

§ 11. Be it further enacted, That when the owner of stock in any bank or banking association or other corporation included in the provisions of section 8 of this act, organized under the laws of this State or of the United States, shall not reside in the same county where the bank or corporation or association is located, or is a non-resident of the State, the revenue collected for the State, county, or municipality shall, respectively, have the power to collect tax assessed by this act by instituting attachment proceedings; and said tax shall be and remain a prior lien on the stock until the payment of the same.

§ 12. Be it further enacted, That for the purpose of collecting such taxes, and in addition to any other laws of this State relative to the imposition and collection of taxes, it shall be the duty of such corporation, to pay the taxes due upon such stock regardless of any dividend or earnings belonging to such stockholder, a prior lien being hereby declared on all such stock on and after the 10th day of January of each year, and the said corporation, being hereby subrogated to such prior lien for the purpose of enforcing repayment of any taxes that may be so paid for the account of any such stockholder. If the taxes on such shares shall not be paid by such corporation, then the State, county, or municipality may, after such tax may have become delinquent, proceed to collect the same by attachment of said shares of stock in any court of competent jurisdiction,

Taxation — Act, April 30, 1897.

through counsel to be employed for that purpose.

§ 13. Be it further enacted, That all persons, co-partnerships, and joint-stock companies engaged in the manufacture of any goods, wares, merchandise, or other articles of value, shall pay an ad valorem tax upon the value of the property, real, personal and mixed, which is used and held for the purpose of manufacturing, preparing, completing, and finishing goods, wares, and merchandise, and articles in the manufacture of which the parties aforesaid shall be engaged; and every corporation organized under the laws of this State, or any other State in the United States, or any of the foreign States, (except banks and banking associations, and except the quasi public corporations mentioned in the next section of this act) engaged in any such manufacturing business, or in any other business, shall pay an ad valorem tax upon the full value of its corporate property (including its franchises, easements, and incorporeal rights, and all other property, as a part of such corporate property), which shall in no case be held or deemed to be less than the actual value of all its shares of stock, together with the actual value of its bonded indebtedness; Provided, That the shares of stock issued by any corporation created or organized under the laws of Tennessee, whether said corporation be engaged in mining, or the manufacture of goods, wares, or merchandise, or other articles of value, or engaged in any other business, shall not be assessed for taxation to such corporation; nor shall said shares of stock be assessed for taxation in the hands of or against the owners and possessors of said stock, and no assessor shall be paid any compensation for wrongfully assessing shares of stock prohibited from assessment by sections 13 and 14 of this act; but their value shall be looked to in arriving at the value of said corporate property (including its franchises, easements, and incorporeal rights, and all other property as a part of such corporate property; and in assessing the corporate property, as provided in this section, a reduction shall be made and given for the value of its real property otherwise assessed. For the purpose of assessing any manufactory, the assessor shall visit and carefully inspect the manufactory itself, with all rights and privileges, and shall cause the owner, operator, business partner, president, or other chief official, operating the same, to answer, under oath and in writing, the following questions:

(1.) Is this manufactory owned and operated by a single person, a co-partnership, a joint-stock company, or a corporation?

(2.) How much money has been invested in real estate, buildings, machinery, and engines, water power or other power, tramways, and privileges belonging to the manufactory? What is their present value?

(3.) Are there any any stocks, bonds or interest-bearing mortgage-debts outstanding against the manufactory?

If stocks, state how much; if debts secured by mortgages, state their amount, and the rate of interest, and whether the interest is paid or in default; and, if in default, how long? What is the stock worth in the market? What are the bonds worth in the market? What dividends have been paid in the last two years? What surplus, if any, on hand? What is approximately the gross amount of articles annually manufactured or prepared in this manufactory? What is the approximate amount and value of manufactured goods and material for manufacture on hand? After informing himself fully as to the value of such manufactory, the assessor shall assess the same for taxation, and also the value of manufactured goods, and material for manufacture on hand, as required in the first part of this section, and return the said affidavit to the county clerk for preservation.

No article manufactured of the produce of the State shall be taxed or taken into account under this section.

§ 14. Be it further enacted, That every quasi public corporation doing business and being operated in this State—such as gas works, water works, electric lights, street railroads, dummy railroads, and all other corporations public in their character and which possess rights, franchises, and privileges, except railroads, telegraph and telephone companies, which are to be assessed by the officers authorized to assess the same, shall pay an ad valorem tax upon the full value of its corporate property (including its franchises, easements, and incorporeal rights, and all other property as a part of such corporate property), which shall in no case be held or deemed to be less than the actual value of all its shares of stock, together with the actual value of its bonded indebtedness;

Provided, That the shares of stock of any such corporation shall not be assessed for taxation; but their value shall be looked to in arriving at the value of said corporate property (including its franchises, easements, and incorporeal rights, and all other property as a part of such corporate property); but in assessing the corporate property, as provided in this section, a reduction shall be given for the value of its real estate otherwise assessed. For the purpose of such assessment the assessor shall inspect all property, real, personal and mixed, owned or used by such corporation in its business, and shall cause the president, or other chief officer operating the same, to answer, under oath, and in writing, the following questions:

(1.) What amount of money has been invested, in real estate, buildings, machinery, engines, rights of way, tracks, motive power, rolling stock, and other property and equipments used in operating the business of the corporation?

Taxation; foreign corporation — Acts, April 30 and March 24, 1897.

(2.) What is the amount of the bonded or mortgaged debt of the corporation, if any? What is the market value of the same? What is the rate of interest? Is the interest paid or in default and if in default, how long?

(3.) What amount of stock has been issued, and what can the stock be sold for in the market?

(4.) What dividends have been paid on stock within the last two years?

And the assessor may examine, under oath, any other person or persons touching the amount and value of the business done by such corporation; and, after informing himself fully upon the subject, he shall assess the corporation for taxation, as required in the first part of this section, and return the said affidavit to the county court clerk for preservation; and all incorporated companies assessible under sections 13 and 14 of this act, owning property in this or any other State, or in one or more counties in this State, shall pay an ad valorem tax upon the full value of its corporate property (including its franchises, easements, and incorporeal rights, and all other property as a part of such corporate property), which shall in no case be held or deemed to be less than the actual value of all its shares of stock, together with the actual value of its bonded indebtedness; and the value of the property of the corporation in the county where located shall not be assessed at less than the relative value of the corporation as capitalized and bonded in the county where located bears to the entire value of the property of the corporation, as capitalized and bonded; and all corporations named or assessible under sections 8, 13 and 14 of this act, through their president or manager, are hereby required, on or before June 1, 1897, and every year thereafter, on or before June 1, to make out and forward to the State comptroller a schedule, or written statement, containing the same matters and answers to all questions required to be given to the assessors, which shall be sworn to by the president or general manager; and all companies failing or refusing to do so within thirty days after the time provided shall be guilty of a misdemeanor, and shall be liable to a fine of two hundred dollars, to go to the State, for each day thereafter; and it shall be the duty of the attorney-general to prosecute any and all parties so offending, upon notice of the State comptroller.

§ 16. Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any

corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of the stock is fixed and prescribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus; Provided, however, That where the State has provided, in the charter of any such corporation or company, that it shall pay a stated per cent. on each share of stock subscribed, annually, to the State, which shall be in lieu of all other taxes, it shall be entitled annually to a credit therefor upon its assessment of capital stock, as hereinbefore provided.

§ 90. Be it further enacted, That this act shall take effect from and after its passage, the public welfare requiring it.

(Approved April 30, 1897.)

See § 1698.

[Charter exemptions from taxation are subject to collateral tax. *State v. Ins. Co.*, 95 Tenn. 203. A grant by the State to one corporation of the rights and privileges of another will not carry an exemption from taxation enjoyed by the latter. *State v. Bank*, 95 Tenn. 212; s. c., 31 S. W. Rep. 989.

Construction of charter exemptions is strict. *State v. Bank*, 95 Tenn. 221; s. c., 31 S. W. Rep. 993.]

Act 25.

AN ACT to postpone the foreclosure of certain mortgages or trust deeds, and validate contracts heretofore made by foreign corporations in this State, where such corporations failed to comply with the requirements of chapters 95 and 122 of the acts of 1891, and chapter 31 of the acts of 1877, providing that any such corporation desiring to own property or to carry on business in this State shall file a copy of its charter in the office of the secretary of State, and cause an abstract of the same to be recorded in the office of the register in each county in which such company desires to carry on business or own property, passed May 9, 1895, and approved May 10, 1895, being chapter 119 of acts of 1895.

Section 1. Be it enacted by the general assembly of the State of Tennessee, That the act passed May 9, 1895, approved May 10, 1895, and being chapter 119 of acts of 1895, and entitled, "An act to postpone the foreclosure of certain mortgages or trust deeds, and to validate contracts heretofore made by foreign corporations in this State, where such corporations failed to comply with the requirements of chapters 95 and 122 of the acts of 1891, and chapter 31 of the acts of 1877, providing that any such corporation desiring to own property, or carry on business in this

Foreign corporations — Act, March 24, 1897.

State shall file a copy of its charter in the office of the secretary of State, and cause an abstract of the same to be recorded in the office of the register in each county in which such company desires to carry on business or own property," be, and is hereby amended by adding after the words, or shall, within four months after the passage of this act, so file such charter and abstracts of the same.

In the first section of said act the words "or to such foreign corporations, as in good faith, shall before September 9, 1895, have

complied with the provisions of chapter 122 of acts of 1891, as modified and amended by the provisions of chapter 81 of acts of 1895; entitled, "An act to amend sections 2, 3 and 4 of an act passed March 21, 1891, being chapter 122 of said acts," etc.

§ 2. Be it further enacted, That all laws and parts of laws as are in conflict with the provisions of this act be, and the same are to the extent of said conflict, hereby repealed; and that said act take effect from and after its passage, the public welfare requiring.

(Approved March 24, 1897.)

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TEXAS

CONSTITUTION OF TEXAS.

PROVISIONS RELATING TO CORPORATIONS.

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Bill of Rights.

- Sec. 16. Obligation of contracts, inviolate.
17. Private property not to be taken without compensation. Irrevocable grants prohibited.

ARTICLE III.

Legislative Department.

- Sec. 54. Legislature not to release lien on railroads.
56. Local and special laws prohibited in certain cases.
57. Notice of local and special laws must be published.

ARTICLE VIII.

Taxation and Revenue.

- Sec. 1. What property and privileges are taxable.
4. Power to tax corporations shall not be surrendered.
5. What property liable to municipal taxation.
8. Property of railroads shall be taxed.

ARTICLE XII.

Private Corporations.

- Sec. 1. Must be created by general laws.
2. General laws for creation of corporations must be enacted.
3. Right to regulate freights, tolls, etc., never to be relinquished.
4. Attorney-general to be empowered to punish illegal collection of tolls, etc.
5. All laws granting right to collect tolls, etc., are subject to amendment and repeal.
6. Stock or bonds not to be issued except for value.
7. Vested rights protected.

ARTICLE XVI.

General Provisions.

- Sec. 16. Corporate bodies with banking privileges, not to be created.
26. Corporations guilty of homicide, subject to exemplary damages.

ARTICLE I.

Bill of Rights.

- § 16. No bill of attainder, * * * or any law impairing the obligation of contracts, shall be made.

Charters may be amended or repealed. R. S., art 650. See Const., art. 3, § 54; art. 12, §§ 3, 5, 7.

§ 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made, but all privileges and franchises granted by the legislature, or created under its authority, shall be subject to the control thereof.

See R. S., art. 650.

ARTICLE III.

Legislative Department.

§ 54. The legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in anywise change the tenor or meaning or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

See art. 1, § 16.

§ 56. The legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing—

* * * * *
Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

* * * * *
Exempting property from taxation;
Regulating labor, trade, mining and manufacturing;

* * * * *
For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; Provided, That nothing herein contained shall be construed to prohibit the legislature from passing special laws for the preservation of the

Taxation, etc.; corporations — Const., Art. iii, § 57; Art. viii, §§ 1, 4, 5, 8; Art. xii, §§ 1-6.

game and fish of this State in certain localities.

Corporations must be created by general laws. Const., art. 12, § 1.

§ 57. No local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the legislature before such act shall be passed.

ARTICLE VIII.

Taxation and Revenue.

Section 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; Provided, That two hundred and fifty dollars' worth of household and kitchen furniture belonging to each family in this State, shall be exempted from taxation; And provided further, That the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

See R. S., arts. 5061 et seq.

§ 4. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the legislature, by any contract or grant to which the State shall be a party.

Taxation of corporations. R. S., arts. 5243i, 5243j.

§ 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies shall have power to require its rendition, and collect

the usual municipal tax thereon, as on other property lying within said municipality.

§ 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the road-bed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the comptroller in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

ARTICLE XII.

Private Corporations.

Section 1. No private corporations shall be created except by general laws.

Local and special laws prohibited. Const., art. 3, § 56. Corporations, how created. R. S., arts. 641 et seq.

§ 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

See R. S., arts. 641 et seq.

§ 3. The right to authorize and regulate freights, tolls, wharfage or fares, levied and collected or proposed to be levied and collected by individuals, companies or corporations, for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority.

See Const., art. 1, § 16, and cross-references.

§ 4. The first legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the attorney-general and district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Attorney-general, duties of. R. S., arts. 2900, 2901.

§ 5. All laws granting the right to demand and collect freight, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the legislature.

See Const., art. 1, § 16, and cross-references.

§ 6. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious

Corporations; general provisions — Const., Art. xii, § 7; Art. xvi, §§ 16, 26.

increase of stock or indebtedness shall be void.

Increase of capital stock. R. S., arts. 652, 652a. Bonds may be issued for money borrowed. R. S., art. 653.

§ 7. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this State or of the Republic of Texas.

See Const., art. 1, § 16, and cross-references.

ARTICLE XVI

General Provisions.

§ 16. No corporate body shall hereafter be created, renewed or extended with banking or discounting privileges.

§ 26. Every person, corporation or company that may commit a homicide, through wilful act or omission or gross neglect, shall be responsible in exemplary damages to the surviving husband, wife, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

REVISED STATUTES OF TEXAS—1895.

TITLE VI. ARBITRATION.

CHAPTER II.

Arbitration of Grievances Between Employer and Employed.

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 61j. Award to take effect.
 61k. Judgment to be entered, etc.

Art. 61a. Whenever any grievance or dispute of any nature growing out of the relation of employer and employes, shall arise or exist between employer and employes, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employes concerned in such grievance or dispute as the aforesaid are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators, and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employes concerned in any such grievance or dispute as aforesaid are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board, and said board shall be organized as hereinbefore provided; and in case the employes concerned in any such grievance or dispute as aforesaid are not members of any labor organization, then a majority of said employes, at a meeting duly held for that purpose, shall designate two arbitrators for said board, and said board shall be organized as hereinbefore provided; Provided, That when the two arbitrators selected by the respective parties to the controversy, the district judge of the district having jurisdiction of the subject-matter shall, upon notice from

either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator.

Art. 61b. Any board as aforesaid selected may present a petition in writing to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition it shall be the duty of said judge, if it appear that all requirements of this law have been complied with, to make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought.

Art. 61c. When a controversy involves and affects the interests of two or more classes or grades of employes belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employes shall be agreed upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization.

Art. 61d. The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employes, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

1. That pending the arbitration the existing status prior to any disagreement or strike shall not be changed.

2. That the award shall be filed in the office of the clerk of the district court of the county in which said board of arbitration is held, and shall be final and conclusive upon both parties, unless set aside for error of law, apparent on the record.

3. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit.

4. That the employes dissatisfied with the

award shall not by reason of such dissatisfaction quit the service of said employer or receiver before the expiration of thirty days, nor without giving said employer or receiver thirty days' written notice of their intention so to quit.

5. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same parties shall be had until the expiration of said one year.

Art. 61e. The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business it shall select one of its members to act as secretary and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed.

Art. 61f. The chairman shall have power to administer oaths and to issue subpoenas for the production of books and papers and for the attendance of witnesses to the same extent that such power is possessed by the court of record or the judge thereof in this State. The board may make and enforce the rules for its government and transaction of the business before it and fix its sessions and adjournment and shall herein examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute.

Art. 61g. When said board shall have rendered its adjudication and determination its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in article 61a, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as fully as if said board was originally created for the settlement of such difference or differences.

Art. 61h. During the pendency of arbitration under this chapter it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employes parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employes to order, nor for the employes to unite in, aid or abet strikes or boycotts against such employer or receiver.

Art. 61i. Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually trav-

eled in getting to or returning from the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to and returning from the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award, and each of the parties to said arbitration shall, before the arbitration [arbitrators] proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration.

Art. 61j. The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employes or their duly authorized representative. That the award being filed in the clerk's office of the district court, as hereinbefore provided, shall go into practical operation and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record, in which case said award shall go into practical operation and judgment rendered accordingly when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom.

Art. 61k. At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered shall have the same force and effect as judgment entered upon an award.

Attachment; corporate purposes — R. S., Arts. 186, 187, 638-642.

TITLE X. ATTACHMENT AND GARNISHMENT.

CHAPTER I.

Original Attachment.

Art. 186. Attachment issued, when and by whom.
187. What further facts must appear.

Art. 186. The judges and clerks of the district and county courts and justices of the peace, may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit in writing, stating—

1. That the defendant is justly indebted to the plaintiff and the amount of the demand; and

2. That the defendant is not a resident of the State or is a foreign corporation, or is acting as such;

* * * * *

Execution. Arts. 2351 et seq.

Art. 187. The affidavit shall further state —

1. That the attachment is not sued out for the purpose of injuring or harassing the defendant; and

2. That the plaintiff will probably lose his debt unless such attachment is issued.

TITLE XXI. PRIVATE CORPORATIONS.

- Ch. 1. Preliminary provisions.
2. Creation of corporations.
3. Powers and duties.
4. Miscellaneous provisions.
5. Dissolution.
17. Foreign corporations.
18. Perpetuities.

CHAPTER I.

Preliminary Provisions.

- Art. 638. Corporations classified.
639. Public corporations.
640. Private corporations.

Art. 638. Corporations are either public or private.

Art. 639. A public corporation is one that has for its object the government of a portion of the State.

Art. 640. Private corporations are of three kinds: first, religious; second, corporations for charity or benevolence; and, third, corporations for profit.

CHAPTER II.

Creation of Corporations.

- Art. 641. Private corporations may be created.
642. For what purposes.
643. Charter, and what it must set forth.
644. Charter must be subscribed and acknowledged.
645. Must be filed with secretary of State.
646. Corporation shall exist from time of filing charter, etc.
647. Charter may be amended, how.
648. When amendment shall take effect.
649. Shall not conflict with Constitution or laws.
650. Legislature may alter, reform or amend.

Art. 641. (As amended by L. 1897, ch. 130.) Private corporations may be created by the

voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned.

See Const., art. 12; Id., art. 16, § 16.

Art. 642. (As amended by L. 1897, ch. 130.) The purposes for which private corporations may be formed are:

1. The support of public worship.
2. The support of any benevolent, charitable, educational or missionary undertaking.
3. The support of any literary and scientific undertaking; the maintenance of a library or promotion of painting, music and other fine arts.

3a. For the establishment and maintenance of oil companies, with authority to contract for the lease and purchase of the right to prospect for, develop, and use, coal and other minerals, and petroleum; also, the right to erect, build, and own, all necessary oil tanks, cars, and pipes, necessary for the operation of the business of the same.

4. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.

5. The maintenance of a public or private cemetery or crematory.

6. The construction and maintenance of any species of roads and bridges in connection therewith.

7. The construction and maintenance of a bridge which may be used for any or all modes of travel and transportation.

8. The construction and maintenance of a telegraph and telephone line.

9. The establishment and maintenance of a ferry.

10. The establishment and maintenance of a line of stages.

11. Building and navigation of steamboats and vessels and the carriage of persons and property therein.

12. The supply of water to the public.

13. The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them to the public, by any means.

14. The transaction of any manufacturing or mining business and the purchase and sale of such goods, wares and merchandise used for such business.

15. The transaction of a printing or publishing business, and in connection therewith, the sale of goods, wares and merchandise of a stationery and blank book manufacturing business.

16. The establishment and maintenance of a hotel or steam laundry.

17. The erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages and their suburbs not exceeding more than two miles beyond their limits; and for the ac-

Corporate purposes — R. S., Art. 642.

cumulation and loaning of money for that purpose.

18. The transportation of goods, wares and merchandise, or any valuable thing.

19. The promotion of immigration.

20. The construction and maintenance of sewers.

21. For the constructing, acquiring and maintaining and operating street railways and suburban belt lines of railways within the near cities and towns, for the transportation of freight or passengers; which may, also, construct, own and operate union depots; but no street railway company shall ever be exempt from the payment of assessments that may be legally levied or charged against it for street improvements; and for the establishment of companies to buy, own, sell and convey the right of way upon which to construct railroads; Provided, That all street or suburban railways engaged in transporting freight shall be subject to the control of the railroad commission.

22. The erection and maintenance of market houses and market places.

23. The construction, maintenance and operation of dams, reservoirs, lakes, wells, canals, flumes, laterals, and other necessary appurtenances for the purpose of irrigation, navigation, milling, mining, stock-raising and city water works.

24. The purchase and sale of goods, wares and merchandise, and agricultural and farm products.

25. For the purpose of buying and selling goods, wares and merchandise of any description, by wholesale or wholesale and retail; Provided, That no corporation created under this subdivision shall be chartered with a capital stock of less than twenty thousand dollars; And provided, further, That such wholesale and retail business shall not be conducted apart or in separate establishments.

26. The construction of harbors and canals on the coast of the Gulf of Mexico.

27. The growing, selling and purchasing of seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

28. The construction or purchase and maintenance of mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevators and public warehouse companies, and the loan of money by such elevators or public warehouse companies.

29. The accumulation and loan of money; but these subdivisions shall not permit incorporations with banking or discounting privileges.

30. The construction and maintenance of stock yards and pens.

31. The construction and maintenance of establishments for slaughtering, refrigerating, canning, curing, and packing meat,

and loaning or advancing money by such establishments on any class of live stock.

32. The construction and maintenance of establishments for the preserving and canning of fruits, vegetables and fish.

33. The establishment and maintenance of clearing houses.

34. To construct and maintain water power.

35. For the purpose of constructing railroads and bridges for railroad companies.

36. To support and maintain bicycle clubs, and other innocent sports.

37. To act as trustee, assignee, executor, administrator, guardian or receiver, when designated by any person, corporation or court so to do, and to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians, or others appointed to or assuming the performance of any trust, public or private, under appointment by any court or tribunal, or under contract between private individuals or corporations; also on any bond or bonds that may be required to be filed in any judicial proceeding; to act as executor and testamentary guardian; when designated as such by decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; Provided, That when any executor's, administrator's or guardian's bond, or any bond required to be filed in any judicial proceeding, may be signed as surety by any corporation organized by authority of this section, and if such corporation shall be deemed and considered by the officer charged by law with the duty of accepting and approving such bond as sufficient security for the amount of such bond, such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other sureties than such corporation, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this section; Provided, That nothing herein shall be construed to permit any corporation to go upon any bond of any State or county official in this State; Provided, That each corporation organized under this section, shall publish in some newspaper of general circulation in the county where such company is organized, on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities, and that a copy of this statement be filed with the commissioner of insurance, statistics and history, and a fee of twenty-five dollars is paid to that officer for filing the same, and that an examination of its affairs be made, at any time by the commissioner of insurance, statistics and history, such examination to be at the expense of the company; Provided,

That guaranty and fidelity companies organized under the provisions of this section shall have a paid-up capital stock of not less than one hundred thousand dollars, and shall keep on deposit with the State treasurer money, bonds, or other securities, in an amount not less than fifty thousand dollars, said securities to be approved by the commissioner of agriculture, insurance, statistics and history, and that this amount be kept intact at all times.

38. For establishing transportation companies, with power to buy, construct, lease, own, operate, maintain and convey all kinds of steamships, vessels and other water crafts, and may navigate the same between all ports of the globe, and upon rivers, and construct, buy, lease, own, maintain, operate and convey warehouses, docks and wharves, and to buy, lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this State such power as may be granted to or conferred upon it by any foreign government, State or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying or selling merchandise in all foreign countries; to carry passengers, freight, express and mail.

39. The establishment of land companies to buy, own, sell and convey real estate in in any State or foreign country; but such companies shall only own such real estate in this State as may be necessary for its office.

40. Any person or association of persons for the purpose of making, complying and owning an abstract of titles to lands and liens of all characters on any property, or any other abstract of records of this State or any county thereof, required by law to be recorded.

41. The improvement of rivers and other waterways in this State, and to render the same navigable for steam vessels and other water crafts, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

42. The protection and preservation and propagation of fish, oysters, and game.

43. For the organization and maintenance of volunteer fire companies.

44. For the protection of women and children and for the prevention of cruelty to animals.

45. For erection and maintenance of sanitariums.

46. For the organization of fire, marine, life, and live stock insurance companies.

47. To construct steam and electric plows for breaking, cultivating and draining of lands.

48. For the organization of laborers, workmen, wage-earners and farmers to protect themselves in their various pursuits.

49. For the promoting and taking stock in manufacturing companies or corporations.

50. For the organization of mutual fire, or storm or lightning insurance companies without an authorized capital; Provided, That the members of said mutual fire insurance companies applying for such charters shall be resident citizens of the State of Texas, which fact shall be proven by the affidavit of a credible person accompanying the articles of incorporation when filed with the secretary of State, and such affidavit shall state that the person making the same is cognizant of the facts therein stated; Provided, further, That no permit to transact business within this State shall be granted to any mutual fire, or storm or lightning insurance company without an authorized capital, incorporated under the laws of any other State.

51. The raising, buying and selling of live stock.

52. The establishment and carrying on of dairies and creamery companies.

53. The construction, maintenance and operation of terminal railway companies, said companies to have no right to charge other railroads for terminal facilities beyond what may be prescribed by the railroad commission.

54. To build, maintain and operate a line of railroad to mines, gins, quarries, manufacturing plants, breweries, and mills, and to condemn land necessary for the right of way for such road, from and between such mine, gin, quarry, manufacturing plant or mill, and the nearest line of railroad. But no corporation created under the provisions of this section shall have the power to condemn private property until said corporation shall declare itself a public highway and common carrier, thus placing said road under the control of the railroad commission of this State.

55. To excavate, maintain, and operate drainage ditches, canals, and flumes, and to condemn land necessary for the right of way and machinery plants for such drainage, ditches, canals and flumes.

56. The stockholders of all private corporations created for profit and with an authorized capital stock under the provisions of this chapter shall be required to subscribe at least fifty per cent. and pay in at least ten per cent. of its authorized capital before it shall be authorized to do business in this State, and whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of State that at least fifty per cent. of its authorized capital has been subscribed, and ten per cent. paid in, it shall be the duty of said officer to receive, file and record the charter of such company in the office of the secretary of State upon application and the payment of all fees therefor, and to give his certificate showing the record of said charter, and authority to do business thereunder; Provided, That foreign corporations obtaining permits to do business in this State shall show to the satisfac-

tion of the secretary of State that fifty per cent. of their authorized capital stock has been subscribed, and that at least ten per cent. of the authorized capital has been paid in, before such permit is issued.

See Const., art. 16, § 16.

Art. 643. A charter must be prepared setting forth:—

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of those who are appointees for the first year.
6. The amount of its capital stock, if any, and the number of shares into which it is divided.
7. The charter of a bridge or ferry company shall also state the stream intended to be crossed by the bridge or ferry.

8. The charter of a road company shall also state: First, the kind of a road intended to be constructed; second, the places from and to which the road is intended to be run; third, the counties through which it is intended to be run; fourth, the estimated length of the road.

[Above article construed. *Hardware Co. v. Manf. Co.*, 86 Tex. 149; s. c., 24 S. W. Rep. 16.]

Art. 644. The charter of an intended corporation must be subscribed by three or more persons, two of whom at least must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgment of deeds; Provided, That all charters for the purposes named in clauses two and three of article six hundred and forty-two of this chapter and title may be subscribed by married women, who may also be stockholders, officers and directors thereof; and their acts, contracts and deeds shall be as binding and effective for all the purposes of said corporation as if they were males, and the joinder and consent of their husbands and privy examinations separate and apart from them shall not be required.

Art. 645. Such charter shall thereupon be filed in the office of the secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof certified under the great seal of the State, shall be evidence of the creation of the corporation.

Art. 646. The existence of the corporation shall date from the filing of the charter in the office of the secretary of State, and the certificate of the secretary of State shall be evidence of such filing.

[See *Bank v. Investment Co.*, 74 Tex. 421; s. c., 12 S. W. Rep. 101.

Corporate existence cannot be questioned collaterally. 1 Tex. Civ. App. C., § 144.]

Art. 647. Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter may amend or change its charter or act of incorporation, by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments or changes with the secretary of State; and in no case of a corporation created by special act of the legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the secretary of State, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the legislature, and the same shall be recorded by the secretary of State, followed by the proposed amendments or changes thereof.

Legislature may amend. Art. 650.

[Arts. 647, 649 and 652 construed together with reference to increase of capital stock. *Kamman v. Tarver*, 87 Tex. 491; s. c., 29 S. W. Rep. 768.]

Art. 648. The amendments or changes provided for in the preceding article shall take effect and be in force from the date of the filing thereof with the secretary of State, and the certificate of the secretary of State shall be evidence of such filing.

Art. 649. No amendments or changes violative of the Constitution or laws of this State, or of any of the provisions of this title, shall be of any force or effect; and no amendments or changes shall be of any force or effect which are not germane to the original purposes or charter of incorporation, and calculated to carry out and effect the same.

[Arts. 647, 649 and 652 construed together with reference to increase of capital stock. *Kamman v. Tarver*, 87 Tex. 491; s. c., 29 S. W. Rep. 768.]

Art. 650. All charters, or amendments to charters, under the provisions of this chapter, shall be subject to the power of the legislature to alter, reform, or amend the same.

Contracts inviolate. Const., art. I, § 16. Irrevocable grants prohibited. Id., § 17. See Const., art. 12, § 3. Amendment of charters. R. S., art. 647.

CHAPTER III.

Powers and Duties of Private Corporations.

- Art. 651. General powers of a corporation.
652. May increase its capital stock, how.
- 652a. Increase in certain cases validated.
653. May borrow money.
654. May open books for subscriptions of stock.
655. Quorum and annual elections.
656. President and secretary to be chosen.
657. By-laws may be adopted, altered, etc.

- Art. 658. May increase number of directors or trustees.
 659. Failure to elect directors shall not dissolve, etc.
 660. Trustees to be elected to control religious corporation.
 661. Directors shall have general management, etc.
 662. Directors shall cause record to be kept, etc.
 663. Shall report to stockholders and make dividends.
 664. Existing corporations may accept provisions of this title, etc.
 665. Corporation restricted to the objects of creation.
 666. Stock of corporation is personal estate.
 667. Directors may require payment of stock.
 668. Stock forfeited, when and how.
 669. Corporation may sue its own members.
 670. Directors liable for debts of corporation, when and how.

Art. 651. [575]. Every private corporation, as such, has power —

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.
2. To maintain and defend judicial proceedings.
3. To make and use a common seal.
4. To hold, purchase, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due or belonging to the corporation.
5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.
6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs and the transfer of its stock.
7. To enter into any obligation or contract essential to the transaction of its authorized business.
8. To increase or diminish, by a vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than thirteen.
9. Any private corporation created either by special act of the legislature, or under the provisions of the general law, for the support of any benevolent, charitable, educational or missionary undertaking, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter may expire or may have expired by limitation, may revive such charter with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of the general law of the State of Texas, reciting

therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original forfeited charter; and any two or more of such corporations may revive and consolidate their charters under a new corporate name or under the name of either, with all the privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by in like manner filing a charter, which shall recite the facts of consolidation, accompanied by certified copies of said original charters; Provided, The provisions hereof shall not be construed to relieve any corporation from the payment of occupation taxes now or hereafter required by law.

Powers limited to purposes of its creation. Art. 665. Conveyances by corporations. Art. 676. Perpetuities in land prohibited. Arts. 749a et seq. May borrow money. Art. 653. By-laws may be altered. Art. 657. Corporation may sue its own members. Art. 659. Attachment. Arts. 186, 187. Execution. Arts. 2351 et seq. Quo warranto. Arts. 4343 et seq. Pleading in general. Art. 1186. Venue. Art. 1194. Process. Arts. 1222-1223. Evidence. Art. 2293a. Trusts and combinations prohibited. Arts. 5313 5321a. Same. Pen. Code, arts. 976-988d.

[Corporation may, for a valuable consideration, undertake to pay the debt of another. Bank v. Invest. Co., 74 Tex. 421; s. c., 12 S. W. Rep. 101. Suit having been commenced in one name, and by amendment, name changed, judgment in new name is good. O'Donnell v. Johns, 76 Tex. 362; s. c., 13 S. W. Rep. 376.

Corporation may sue for exemplary damages. Railway Co. v. Telegraph Co., 69 Tex. 277; s. c., 5 S. W. Rep. 517.

And may be made liable for actual and exemplary damages for libel. Railway Co. v. Richmond, 73 Tex. 568; s. c., 11 S. W. Rep. 555.

Above section construed. Hardware Co. v. Mauf. Co., 86 Tex. 149; s. c., 24 S. W. Rep. 16.

It is well established that a corporation is not bound by the contracts of its promoters, although after incorporation it may adopt such contracts, and thereby make itself liable. Cotton Press Co. v. McKellar, 86 Tex. 694; s. c., 26 S. W. Rep. 1056.

Under articles 651 and 653, all corporations organized under the General Incorporation Law are empowered to mortgage their property. A sale under such mortgage will pass title to purchaser. Threadgill v. Pumphrey, 37 Tex. 573; s. c., 30 S. W. Rep. 356.

Parties dealing with a corporation must take notice of its powers, but are not bound to take notice of the manner in which it is attempted to exercise such powers. Kampman v. Tarver, 87 Tex. 491; s. c., 29 S. W. Rep. 768.

When corporate authority refuses to sue to redress an infringement of corporate rights, the stockholders by showing such refusal, may sue to obtain the same relief as though brought by the corporation itself. People's Inv. Co. v. Crawford, 45 S. W. Rep. 738.

Where an agent of a corporation retaining profits belonging to the company, the corporation might recover them, although the directors had acquiesced in his retaining them. Moore v. Bldg. Assn., 45 S. W. Rep. 974.]

Art. 652 [576]. Any corporation may increase its capital stock to any amount, not exceeding at any one time double the amount of its authorized capital, by a vote of the stockholders, in conformity with the

Increase of capital; bonds; directors — R. S., Arts. 652a-661.

by-laws thereof, and if a majority of the stockholders shall vote for the increase of the stock, the same may be increased by the board of directors, trustees, or other business managers of such corporation, and upon such increase of stock being made, in accordance with the by-laws, the date and amount shall be certified to the secretary of State by the directors or trustees, and from the time such certificate is filed, the increase of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter; Provided, That no stock shall be issued except for money paid, labor done, or property actually received.

Fictitious increase prohibited. Const., art. 12, § 6.

[Arts. 647, 649 and 652 construed together with reference to increase of capital stock. *Kampan v. Tarver*, 87 Tex. 491; s. c., 29 S. W. Rep. 768.]

Art. 652a. That in all cases where the amount of the capital stock of any corporation has heretofore been increased by more than one increase thereof to an amount in excess of double the amount of the original capital, and such increase has been made with the sanction of the secretary of State, under his construction of the law, such increase shall be, and the same is hereby, validated and declared legal.

Art. 653 [577]. Corporations shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation.

Bonds not to issue except for value. Const., art. 12, § 6.

[Above article evidently refers only to a corporation doing business. *Hardware Co. v. Manf. Co.*, 86 Tex. 149; s. c., 24 S. W. Rep. 16.

Under articles 651 and 653, all corporations organized under the General Incorporation Law are empowered to mortgage their property. A sale under such mortgage will pass title to purchaser. *Threadgill v. Pumphrey*, 87 Tex. 573; s. c., 30 S. W. Rep. 356.]

Art. 654 [578]. Whenever the full amount of the capital stock of a corporation having already subscribed in good faith, the directors or trustees named in the charter, or a majority of them, may within three months after the filing of the charter, cause books to be opened for receiving subscriptions to the capital stock of the corporation, at such time or times and at such place or places as they may determine, after having given at least thirty days' notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books may be kept open till the whole amount of capital stock is subscribed.

Art. 655 [579]. A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees at such time and place as the by-laws of the corporation may require.

Number of directors may be increased. Art. 658.

Art. 656 [580]. The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation.

Art. 657 [581]. The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members.

Power to make by-laws. Art. 651.

Art. 658 [582]. All corporations heretofore created and now in existence under any law of this State, are hereby authorized to increase the number of directors or trustees of any such corporation.

Directors elected annually. Art. 655.

Art. 659 [583]. In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such corporation shall not for that reason be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof.

Art. 660 [584]. The secular affairs of a religious corporation shall be under the control of a board of trustees to be elected by the members of such corporation, and the title to all property of any such corporation shall vest in such trustees.

Art. 661 [585]. The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed in such manner as the by-laws may prescribe.

Directors liable for debts, when. Art. 670.

[Authority of agent of a corporation must depend, as that of the agent of a person, on the terms of his appointment. *Land Co. v. McCormick*, 85 Tex. 416; s. c., 23 S. W. Rep. 123.

Acts of officer of a corporation in excess of power conferred by the charter discussed. *Land Co. v. McCormick*, 85 Tex. 416; s. c., 23 S. W. Rep. 123.

A director is without authority to act as such in a matter in which his interest is adverse to that of the corporation. It seems that acts by directors so disqualified would not bind the corpora-

Dividends; acceptance of act; payment of subscriptions — R. S., Arts. 662-670.

tion. *Street Ry. Co. v. Adams*, 87 Tex. 125; s. c., 26 S. W. Rep. 1040.

While the board of directors can appoint agent to transact the ordinary business of the corporation, it cannot confer upon others the power to discharge duties imposed upon it which involve exercise of judgment and discretion, except in the transaction of the ordinary corporate business. *Tempel v. Dodge*, 89 Tex. 68; s. c., 32 S. W. Rep. 514; 33 id. 222.

A party dealing with an agent of a corporation, must at his peril, ascertain what authority the agent possesses. *Railway Co. v. Faulkner*, 88 Tex. 652.]

Art. 662 [586]. They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder.

Records as evidence. Art. 677.

Art. 663 [587]. They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe.

Art. 664 [588]. Any corporation heretofore organized and now in existence under any general or special law of the Republic or State of Texas, may, by a vote of its board of directors, accept any or all of the provisions of this title, and have and exercise all of the rights, power and privileges conferred by this title, by filing a copy of their acceptance with the secretary of State; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the secretary of State, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the secretary of State, not abandoned in the copy of acceptance of any or all the provisions of this title.

Art. 665 [589]. No corporation created under the provisions of this title shall employ its stock, means, assets or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation.

General powers. Art. 651.

[Above section is merely declaratory of the common law. *Bond v. Terrell Manf. Co.*, 82 Tex. 309; s. c., 18 S. W. Rep. 691.

Corporations organized under general laws have no other powers except those expressly given or necessarily incidental thereto. *Hardware Co. v. Manf. Co.*, 86 Tex. 149; s. c., 24 S. W. Rep. 16.

A corporation, created for the purpose of carrying on a business under a statute, which merely

states the nature of the business and does not further define its powers, may exercise such powers as are reasonably necessary to accomplish the purpose of its creation; and it may be such as are usually incidental in practice to the prosecution of the business, and no more. *Railway v. Worthington*, 88 Tex. 586.

It seems that the powers of a charter under the general law should be more strictly construed as to implied powers than if granted under special act of the legislature. *Id.*]

Art. 666 [590]. The stock of any corporation created under this title shall be deemed personal estate; and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe.

Art. 667 [591]. The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as may be required by the by-laws.

Art. 668 [592]. If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made.

Stockholders liable on execution, when. Art. 671.

Art. 669 [593]. All bodies corporate may sue for, recover and receive from their respective members all arrears or other debts, dues or other demands which are now, or hereafter may be, owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body.

[In a suit by a corporation against one of its members for an assessment, it must be shown by competent evidence that the assessment was made, and the best evidence is a copy of the record of the assessment, duly authenticated by the seal of the corporation. *Stock Assn. v. West*, 76 Tex. 461; s. c., 13 S. W. Rep. 307.]

Art. 670 [594]. If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all

Liability of stockholder; principal office; conveyances, etc.—R. S., Arts. 671–679.

be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from the said liability.

CHAPTER IV.

Miscellaneous Provisions.

- Art. 671. When and how stockholders may be made liable on execution.
 672. Secretary shall furnish names, etc., of stockholders to plaintiff.
 673. Principal office shall be kept in State.
 674. Misnomer shall not vitiate.
 675. Existence of corporation shall not be disputed collaterally.
 676. Corporations may convey lands, how.
 677. Records of corporation are evidence.
 678. Corporations organized under act of 1871 validated.
 679. Business firm shall give notice of intention to incorporate.

Art. 671 [595]. If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged; and upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders.

Stock forfeited, when. Art. 668.

[Stockholder not personally liable to creditor, when. Walker v. Lewis, 49 Tex. 123.
 Provisions of above article do not apply to an insolvent corporation in hands of a receiver. Showalter v. Imp. Co., 83 Tex. 162.]

Art. 672 [596]. The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation.

Art. 673 [597]. Each corporation or joint-stock company, of every description, whether organized and acting under a special charter or general law of the State, shall keep its principal office within this State.

Art. 674 [598]. No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise or bequest to the same.

Art. 675 [599]. No person who assumes an obligation to an ostensible corporation, as such, shall resist the enforcement of such obligation on the ground that there was in fact no such corporation, until that fact had been adjudged in a direct proceeding had for the purpose.

[See 1 Tex. Civ. App. C., § 141.]

Art. 676 [600]. Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or the presiding member or trustee of said corporation, and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the manner prescribed for other conveyance of lands, may be recorded in like manner and with the same effect as other deeds.

Power to convey. Art. 651.

[Above section construed. Muller v. Boone, 63 Tex. 91; Ballard v. Carmichael, 83 Id. 355; s. c., 18 S. W. Rep. 734.]

Art. 677 [601]. The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party.

Records shall be kept. Art. 662.

[Corporate records are prima facie evidence of the facts therein stated, but proceedings omitted therefrom may be shown by other testimony. Pickett v. Abney, 84 Tex. 645.]

Art. 678 [602]. All articles of association filed in the State department in accordance with the provisions of an act entitled "An act concerning private corporations," purporting to have been passed December 2, 1871, are hereby validated as fully as if filed under the provisions of this title.

Art. 679 [603]. Whenever any banking, mercantile or other business firm desire to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of State government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and if not, then in some newspaper in some adjoining county, and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

CHAPTER V.

Dissolution of Private Corporations.

Art. 680. Corporation is dissolved, how.

681. Dissolved by failure to begin operations in three years.

682. Receiver or trustees to close business of, etc.

683. Trustees responsible to creditors, etc., to what extent.

684. Liability of stockholders to creditors and to each other.

685. Stockholders may compel contribution.

686. Only liable for unpaid stock.

Art. 680 [604]. A corporation is dissolved —

1. By the expiration of the time limited in its charter.

2. By a judgment of dissolution rendered by a court of competent jurisdiction.

Failure to elect directors does not dissolve. Art. 659. Quo warranto proceedings. Arts. 4343 et seq.

[Corporate existence continues though one creditor buys all the corporate property. *Railway Co. v. Morris*, 67 Tex. 692; s. c., 68 Id. 49; 3 S. W. Rep. 457; *Railway Co. v. State*, 75 Tex. 434; s. c., 12 S. W. Rep. 630. A corporation cannot render itself incapable of performing its corporate duties to the public by sale or lease. *Railway Co. v. Morris*, supra.

Not necessarily dissolved by insolvency. *Bank v. Sachtleben*, 67 Tex. 420; s. c., 3 S. W. Rep. 733.

Lawful dissolution destroys all corporate rights and franchises. *Railway Co. v. State*, 75 Tex. 356; s. c., 12 S. W. Rep. 685.]

Art. 681 [605]. Every corporation created under this title, or any general law of this State, shall commence active operations within three years after filing its charter with the secretary of State, and in default thereof said corporation shall be dissolved and its charter become void.

Art. 682 [606]. Upon the dissolution of any corporation already created by or under the laws of this State, unless a receiver is appointed by some court of competent authority, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution as far as such money and property will enable them; and for this purpose they may maintain or defend any judicial proceeding.

Receivers in general. Arts. 1465 et seq.

[Above article construed. *Hardware Co. v. Manf. Co.*, 86 Tex. 149; s. c., 24 S. W. Rep. 16.]

Art. 683 [607]. The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands.

Art. 684 [608]. If any corporation created under this title or any general statute of this State, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit, and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders defendant in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Art. 685 [609]. If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action.

Art. 686 [610]. No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

CHAPTER XVII.

Corporations — Foreign.

Art. 745. Foreign corporation for pecuniary profit required to file copy of its articles with secretary of State.

746. No such corporation can maintain any suit or action unless complying with provisions hereof.

747. Corporations exempted from provisions hereof.

748. Permit to extend for period of ten years.

749. Evidence.

Art. 745. (As amended by L. 1897, ch. 119.) Hereafter any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any Territory of the United States, or of any municipality of such State or Territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this State, or solicit business in this State, or establish a general or special office in this State, shall be and the same is hereby required to file with the secretary of State a duly certified copy of its articles of incorporation, and thereupon the secretary of State shall issue to such corporation a permit to transact business in this State. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes; and such corporation on obtaining such permit shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized

Foreign corporations; permit to do business — R. S., Arts. 746- 749a.

under the laws of this State, and shall be authorized and empowered to hold, purchase, sell, mortgage, or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also, to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to the corporation; Provided, That if such corporation so obtaining a permit to do business in this State, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition; And provided, further, That such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or if such permit be renewed, or such corporation be otherwise authorized to carry on business in this State, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or if it is so authorized to carry on business in this State; And provided, further, That if such corporation shall cease to carry on business in this State, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this State.

Service of process on foreign corporation. Art. 1223. Venue of actions against. Art. 1194.

[A corporation is conclusively presumed to be a citizen of the State which created it. *Railway Co. v. Harrison*, 73 Tex. 103; s. c., 11 S. W. Rep. 168. It does not lose such citizenship by doing business in another. Id.]

Proof of capacity of foreign corporation. *Western, etc. Co. v. Curtis*, 1 Tex. App. Cas., 729.

The comity which permits a corporation created by the laws of one State to do business in another, does not extend so far as to concede to it in this State the exercise of a power which would be in violation of the laws or public policy of this State if exercised by domestic corporation. *Fowler v. Bell*, 90 Tex. 150; s. c., 39 S. W. Rep. 1058.

A foreign corporation can exercise in this State no power prohibited to it by its charter. The general laws of another State limiting the powers of a corporation created therein, constitute the charter of such corporation and limit its capacity to act in Texas to the same extent as if chartered by special act of such foreign State containing the same limitation. *House of Mercy v. Davidson*, 90 Tex. 529; s. c., 39 S. W. Rep. 924.

A corporation of another State doing business through a branch office in Texas, must allege and prove that it had obtained a permit to do business here, as required by the statute, in order to maintain suit upon a damage accruing in Texas. *Taber v. B. & L. Assn.*, 91 Tex. 91.

A corporation of another State applied for mandamus to compel the secretary of State to receive the annual tax of ten dollars, as required by the act of 1893, claiming that the act of 1897, imposing a higher tax, was unconstitutional because discriminating between foreign and domestic corporations. Held, that since that officer had refused to receive the sum offered, on the ground of insufficiency in amount, the actual receipt of the

money by him was unnecessary and for the protection of relator's alleged right to do business, and the mandamus should be denied. *The Arkansas B. & L. Assn. v. Madden*, 91 Tex. 461.

A granted permit to foreign corporation to do business does not absolve it from responsibility to the police power. *Oil Co. v. State*, 44 S. W. Rep. 936.

R. S. 1895, tit. 21, chap. 17, prohibiting foreign corporations from bringing action without filing their articles of incorporation, held not to apply to a cause of action accruing at the time when the corporation was not transacting business within the State. *Whitley v. Gen. Elec. Co.*, 45 S. W. Rep. 959.

R. S. 1895, § 745, etc., do not prevent foreign corporations without permit, from suing for property in the State not growing out of the business in which it is engaged. *Implement Co. v. Beer*, 45 S. W. Rep. 972.

Arts. 745 to 747 (R. S. 1895) construed. *Allen v. Tyson-Jones Buggy Co.*, 91 Tex. 22.]

Art. 746. No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of State for the purpose of procuring its permit.

Art. 747. The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the commissioner of agriculture, insurance, statistics and history.

Art. 748. No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of State.

Art. 749. Either the original permit or certified copies thereof by the secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter.

CHAPTER XVIII.

Perpetuities.

Art. 749a. Corporation acquisitions of speculative lands prohibited.

749b. Present corporate holdings to be alienated.

749c. Holdings of other corporations restricted.

749d. Forfeiture prescribed; duty of attorney-general.

749e. Proceeds of such forfeiture to be covered into the treasury.

Art. 749a. No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease, or otherwise, shall hereafter be permitted to

acquire any land within this State by purchase, lease, or otherwise.

Power to acquire lands. Art. 651.

Art. 749b. All private corporations whose main purpose or business is the acquisition or ownership, by purchase, lease, or otherwise, of lands in this State, shall, within fifteen years from the time this law takes effect, make an actual bona fide sale of all lands, or interest therein acquired, before this law takes effect, and shall within said fifteen years, by proper deed, convey in good faith all their right and title to said land. And lands acquired by corporations in payment of debts due such corporation shall be sold and conveyed as herein provided within fifteen years from the date of the acquisition of such land.

Art. 749c. (As amended by L. 1897, ch. 48.) All private corporations authorized by the laws of Texas, as provided in article six hundred and forty-two, to do business in this State, whose main purpose is not the acquisition or ownership of lands, as mentioned in the preceding articles, which have, heretofore, or may, hereafter, acquire, by lease, purchase, or otherwise, more land than is necessary to enable them to carry on their business, shall, within fifteen years from the time this law takes effect, or the date said land may be hereafter acquired in good faith, sell and convey in fee-simple all lands so acquired, and which are not necessary for the transaction of their business. And no private corporation shall be permitted to purchase any land under the provisions of this and the preceding articles, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business, to secure the payment of debt: Provided, however, That nothing in this law shall be construed to prohibit the lease, purchase, sale, or subdivision of real property within incorporated towns, cities, or villages, and their suburbs, not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell, and subdivide, real estate, within towns, cities, and villages, and their suburbs, whether their suburbs be stated to be measured from the limits, merely, or the corporate limits, of such towns, cities, and villages: And provided, further, That all such corporations now existing, or which may be hereafter created, shall be authorized to lease, sell, or subdivide real property in any unincorporated city, town, or village, or the suburbs thereof, within this State: Provided, If there be a courthouse in such city, town, or village, such lease, sale, or subdivision, may extend two miles in any direction from such courthouse. If there be a depot or depots, and no courthouse, then, the two miles shall be measured from the depot nearest the center

of such city, town or village: and in case there be neither courthouse nor depot then, the two miles shall be measured from the center of such city, town, or village.

Art. 749d. All corporations holding lands contrary to the provisions of this law shall hold the same subject to the forfeiture and escheat proceedings, and it shall be the duty of the attorney-general, or other attorney appointed by the governor for that purpose, when he is informed or has reason to believe that any corporation is holding lands in violation of this law, to institute suit in the name of the State of Texas, in the district court of Travis county, or in the district court of any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided in title thirty-eight in the Revised Civil Statutes of Texas, for the escheat of estates of deceased persons dying without devise thereof and having no heirs.

Art. 749e. If it shall be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution. The proceeds of such sale to be applied, first, to the payment of costs of such suit, and balance to be paid into the State treasury, subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale, and if the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat absolutely to the State and be applied to the available school fund of the State of Texas. The court trying said cause shall allow the attorney representing the State a reasonable fee, to be taxed as cost in the suit, but in no case shall the State be liable for costs or fees unless it is successful in said suit.

TITLE XXX. COURTS—DISTRICT AND COUNTY, PRACTICE IN.

- Ch. 2. Pleading in general.
- 4. Venue.
- 6. Process and returns.
- 21. General provisions; receivers.

CHAPTER II.

Pleading in General.

Art. 1186. Pleading charters and acts of incorporation.

Art. 1186. In pleading the charter or act of incorporation of any corporation, public or private, it shall not be necessary to set out at length such charter or act of incorporation, but it shall be sufficient to allege that such corporation was duly incorporated, and such allegation by either party shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney.

Venue of suits; service of process; receivers — R. S., Arts. 1194, 1222, 1223, 1465, 1466.

CHAPTER IV.

Venue of Suits.

Art. 1194. In what counties suits shall or may be brought.

Art. 1194. No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile, except in the following cases, to-wit:

* * * * *

21. Suits in behalf of the State for the forfeiture of the charters of private corporations chartered by act of the legislature, shall be commenced in the district court of the county in which the seat of government may be.

* * * * *

23. Suits against any private corporation, association or joint-stock company may be commenced in any county in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as provided for in article 1484.

* * * * *

25. Foreign, private or public corporations, joint-stock companies or associations, not incorporated by the laws of this State, and doing business within this State, may be sued in any court within this State having jurisdiction over the subject-matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or when the defendant corporation has no agent or representative in the State, then in the county where the plaintiffs or either of them reside.

* * * * *

Foreign corporations. Arts. 745 et seq.

CHAPTER VI.

Process and Returns.

Art. 1222. Against incorporated companies, etc.
1223. Foreign corporations, how served.

Art. 1222. In suits against any incorporated company or joint-stock association the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours; and in suits against receivers of railroad companies service may be had upon the receiver or

upon the general or division superintendent or upon any agent of the receiver who resides in the county in which the suit is brought.

Art. 1223. In any suit against a foreign, private or public corporation, joint-stock company or association or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer, or general manager, or upon any local agent within this State, of such corporation, joint-stock company or association, or acting corporation or association.

Foreign corporations. Arts. 745 et seq.

CHAPTER XXI.

General Provisions — Receivers.

Art.
1465. When receivers may be appointed.
1466. Who not qualified to act as receiver.
1467. Appointment of receiver, when void.
1468. Appointment of person disqualified ground of forfeiting charter.
1469. Oath and bond of receiver.
1470. Receiver's right to sue, etc.
1484. Suits against receiver.
1487. Jurisdiction to appoint receiver in certain cases.
1488. Receiver of corporation, where applied for.
1489. Where there are betterments general creditors have rights to be protected.
1490. Judgments and other claims have preference over mortgage.
1491. Receivership of corporations limited to three years.
1492. Application for receiver, by whom.
1493. Rules of equity shall govern in receivership proceedings.

Art. 1465. Receivers may be appointed by any judge of a court of competent jurisdiction in this State, in the following cases:

* * * * *

3. In cases where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity.

Receivers of corporations. Art. 682.

Art. 1466. No party, attorney or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein, nor shall any person be appointed receiver in any case where the property lies within this State, unless the person appointed at the time of his appointment is a bona fide citizen of the State of Texas and qualified to vote, and during the pendency of said receivership the person or persons so appointed receiver shall keep and maintain actual residence within this State. And if in any action for the appointment of a receiver the property sought to be placed in the hands of a receiver is situated partly in this State and partly without, then no person shall be appointed receiver of that part of the property situated in this State unless such per-

son at the time is a bona fide citizen of this State and qualified to vote, and during the pendency of said receivership the person or persons so appointed receiver shall keep and maintain actual residence within this State.

Art. 1467. If any person should be appointed receiver of property situated in this State, or a part of which is situated in this State and a part without, who is not at the time a bona fide citizen of this State and entitled to vote, all such appointments shall be absolutely null and void in so far as the property situated within this State is concerned.

Art. 1468. If any corporation owning property in this State and chartered by this State shall have a receiver of its property situated in this State appointed who is not at the time of appointment a bona fide citizen of this State and qualified to vote, said corporation shall thereby forfeit its charter, and it shall be the duty of the attorney-general to at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter, and the court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this State who is not qualified to act under the provisions of this article.

Art. 1469. When a receiver is appointed he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a bond, with three or more good and sufficient sureties, to be approved by the court appointing him, in such sum as the court shall see proper to fix, conditioned that he will faithfully discharge all the duties of receiver in the action (naming it) and obey the orders of the court therein.

Art. 1470. The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize.

Art. 1484. Actions may be brought against the receiver of the property of any person where said person resides. Actions may be brought against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed and service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county in which the suit is brought.

Art. 1487. When a person resides in this State and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this State, no court other than one within the limits of this State shall have power to appoint any receiver of said property.

Art. 1488. If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this State, or partly within this State, then the action to have a receiver appointed shall be brought in this State in the county where the principal office of said corporation is located.

Art. 1489. When a receiver of a corporation has, under the order of the court, made improvements upon the property of said corporation, and has also, under the order of the court appointing him, purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended such road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid; and if there are any liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then it shall be and is hereby made the duty of the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, to detain in the hands of the clerk of the court money to the full value of the improvements made by said receiver of said property out of the proceeds of the sale of the property sold, and pay the same over to any person or persons who has or may have a claim, debt, or judgment against said corporation; and the court in ordering the sale of the property shall require sufficient cash money to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver.

Art. 1490. All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings.

Art. 1491. No corporation shall be administered in any court for a longer period than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation.

Art. 1492. No receiver shall ever be appointed of any joint stock, incorporated company, or of any copartnership or private person, on the petition of such joint-stock, incorporated company, partnership or person; Provided, That any stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a re-

Execution, etc.; fees; forfeiture, etc.—R. S., Arts. 1493, 2293a, 2351, 2354, 2372, 2439, 2900.

ceiver appointed as in ordinary cases; And provided further, That nothing herein shall prevent a member of any copartnership from having a receiver appointed whenever a cause of action arises between the copartners.

Art. 1493. In all matters relating to the appointment of receivers, and to their powers, duties, and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with the provisions of this chapter and the general laws of the State.

TITLE XL. EVIDENCE.

CHAPTER III.

Depositions.

Art. 2293a. Ex parte depositions prohibited, when.

Art. 2293a. [Enacted by L. 1897, ch. 92.] Where either party to any suit is a corporation, neither party thereto shall be permitted to take ex parte depositions.

TITLE XLI. EXECUTION.

Art. 2351. Execution on shares of stock, etc.

2354. Shares of stock may be sold.

2372. Personal property present at sale, except.

Art. 2351. A levy on the stock of any corporation or joint-stock company is made by leaving a notice thereof with any officer of such company.

Attachment. Arts. 186, 187.

[At common law corporate shares are not subject to levy and sale upon execution. Under above article, shares levied upon may be sold under execution. *Keating v. Live Stock Co.*, 83 Tex. 467; s. c., 18 S. W. Rep. 797.]

Art. 2354. Shares of stock in any joint-stock or incorporated company may be sold on execution against the person owning such stock.

Art. 2372. Personal property shall not be sold unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint-stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession, in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

TITLE XLV. FEES OF OFFICE.

CHAPTER I.

Of Certain State Officers.

Art. 2439. Fees of State department.

Art. 2439. The secretary of State, besides other fees that may be prescribed by law,

is authorized and required to charge for the use of the State the following fees: For each and every charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line, or street railway, or express company, authorized or required by law to be recorded in said department, a fee of one hundred dollars, to be paid when said charter is filed; Provided, That if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of twenty-five dollars for each one hundred thousand dollars authorized capital stock, or fractional part thereof, after the first; * * * for each and every charter, amendment or supplement thereto, of a private corporation, created for any other purpose, intended for mutual profit or benefit, a fee of twenty-five dollars shall be paid when the said charter is filed for record; Provided, That if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of five dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof, after the first. * * * Each foreign corporation shall pay fees as follows: If its capital stock be one hundred thousand dollars or less, a fee of twenty-five dollars to procure a permit; if its capital stock be more than one hundred thousand dollars, and less than five hundred thousand dollars, it shall pay a fee of fifty dollars; if its capital stock be five hundred thousand dollars, and less than one million dollars, it shall pay a fee of one hundred dollars; if its capital stock exceed one million dollars, it shall pay a fee of two hundred dollars. All fees mentioned in this article shall be paid in advance into the office of secretary of State, and shall be by him paid into the State treasury monthly.

TITLE LII. HEADS OF DEPARTMENTS.

CHAPTER V.

Attorney-General.

Art. 2900. Enforced forfeitures of charters, when.
2901. To inquire into charter rights, etc.

Art. 2900. It shall be the duty of the attorney-general, unless otherwise expressly directed by law, whenever sufficient cause exists therefor, to seek a judicial forfeiture of the charters of private corporations; and he shall at once take steps to seek such forfeiture in all cases where satisfactory evidence is laid before him that any corporation receiving State aid has by the non-performance of its charter conditions or the violations of its charter, or by any act or omission, misuser or non-user, forfeited its charter or any rights thereunder.

Quo warranto proceedings. Arts. 4343-4348. See Const., art. 12, § 4.

Quo warranto; taxation — R. S., Arts. 2901, 4343-4348, 5061, 5063.

Art. 2901. He shall also especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law.

See Const., art. 12, § 4.

TITLE XIII. QUO WARRANTO.

- Art. 4343. Petition for, when presented.
 4344. Joinder of parties, when.
 4345. Citations to issue, etc.
 4346. Proceedings as in civil cases.
 4347. Judgment of court.
 4348. Law cumulative.

Art. 4343. In case any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes any office or franchise, or any office or any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by the provisions of law works a forfeiture of his office, or any association of numbers of persons shall act within this State as a corporation without being legally incorporated, or any incorporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as a corporation, or exercises power not conferred by law, or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight and passengers, or refuse to draw or carry the cars of any other railroad company over its line, as required by the laws of this State, the attorney-general, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof, in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas; and if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition and order the information to be filed and process to issue.

Duties of attorney-general. Arts. 2900, 2901.
 Dissolution. Arts. 680 et seq.

Art. 4344. When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise.

Art. 4345. When the information is filed, as hereinbefore provided, the clerk shall issue citations in like form as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator

in an information in the nature of a quo warranto. If the information is filed in vacation the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court.

Art. 4346. Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil causes in this State; and in cases of appeal, to which either party shall be entitled, the said court shall give preference to such case and hear and determine the same at the earliest day practicable; and all such appeals shall be prosecuted to the term of the court in session, or the first term to be held, if not in session, after judgment has been rendered in the district court.

Art. 4347. In case any person or corporation against whom any such proceeding is filed shall be adjudged guilty, as charged in the information, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise, and shall also give judgment in favor of the relator for costs of the prosecution.

Art. 4348. The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing.

TITLE CIV. TAXATION.

- Ch. 2. Of the property subject to taxation and the mode of rendering the same.
 9. Taxation of corporations.

CHAPTER II

Of the Property Subject to Taxation and the Mode of Rendering the Same.

- Art. 5061. All property to be taxed.
 5063. Personal property, what.
 5066. When to be rendered.
 5067. How to be rendered.

Art. 5061. All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed.

See Const., art. 8.

Art. 5063. Personal property shall, for the purposes of taxation, be construed to include * * * all stock in turnpikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, * * * all shares in any bank organized or that may be organized under the law of the United States; all improvements made by

Taxation of corporations — R. S., Arts. 5066, 5067, 5243i, 5243j.

persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

Art. 5066. All property shall be listed for taxation between January first, and June first of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it.

Art. 5067. All property shall be listed or rendered in the manner following:

1. Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint-stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

* * * * *

7. The property of corporations whose assets are in the hands of receivers, by such receivers.

8. The property of a body politic or corporate, by the president or proper agent or officer thereof.

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CHAPTER IX.

Taxation of Corporations.

Art. 5243i. Franchise tax on corporations.

5243j. Secretary of State to notify corporations.

Art. 5243i. [As amended by L. 1897, ch. 120.] Each and every private domestic corporation heretofore chartered under the laws of this State shall pay to the secretary of State an annual franchise tax of ten dollars on or before the first day of May of each year; and every such corporation which shall be hereafter chartered under the laws of this State shall also pay to the secretary of State an annual franchise tax of ten dollars, the tax for the first year to be paid at the time such charter is filed, and the secretary of State shall not be required or permitted to file such charter until such tax is paid, and each succeeding tax shall be paid on or before the first day of May of each year thereafter; Provided, That any such corporation having an authorized capital stock of over fifty thousand dollars, and less than a hundred thousand dollars, shall pay an annual franchise tax of twenty dollars; and every such corporation having an authorized capital stock of one hundred thousand dollars and less than two hundred thousand dollars, shall pay an annual franchise tax of

thirty dollars; and every such corporation having an authorized capital stock of two hundred thousand dollars or more shall pay an annual franchise tax of fifty dollars. Each and every foreign corporation heretofore authorized to do business in this State under the laws of this State shall, on or before the first day of May of each year, and each and every such corporation which shall hereafter be so authorized to do business in this State, shall, at the time so authorized, and on or before the first day of May of each year thereafter, pay to the secretary of State the following franchise tax: Every such corporation having an authorized capital stock of twenty-five thousand dollars or less, an annual franchise tax of twenty-five dollars; every such corporation having an authorized capital stock of more than twenty-five thousand dollars and not exceeding one hundred thousand dollars, an annual franchise tax of one hundred dollars; every such corporation having an authorized capital stock of over one hundred thousand dollars, an annual franchise tax of one hundred dollars, and in addition thereto an annual franchise tax of one dollar for every ten thousand dollars of authorized capital stock over and above one hundred thousand dollars and not exceeding one million dollars; and if such authorized capital stock exceeds one million dollars, then such corporation shall pay a still further additional tax of one dollar for every one hundred thousand dollars over and above one million dollars. Any corporation, either domestic or foreign, which shall fail to pay the tax provided for in this article at the time specified therein, shall, because of such failure, forfeit its right to do business in this State, which forfeiture shall be consummated, without judicial ascertainment, by the secretary of State entering upon the margin of the ledger kept in his office relating to such corporations, the word, "forfeited," giving the date of such forfeiture, and any corporation whose right to do business may be thus forfeited shall be denied the right to sue or defend in any of the courts of this State, and in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief may be granted to such defendant corporation, unless its right to do business is revived as provided in Art. 5243j of this act. All transportation companies now paying an annual income tax on their gross receipts in this State shall be exempted from the franchise tax above imposed.

See Const., art. 8.

Art. 5243j. [As amended by L. 1897, ch. 120.] The secretary of State shall on or before the first day of March of each year, notify all private domestic and foreign corporations subject to a franchise tax by any law of this State, by mailing to the post-office named as the principal place of busi-

ness of such corporation in its articles of incorporation, or to any other place of business of such corporation, addressed in its corporate name, written or printed notice that such tax will be due at a date named therein, a record of the date of which mailing must be kept by said officer, and which mailing of such notice and the said record thereof shall constitute legal and sufficient notice for all the purposes of this act; and in thirty days after the first day of May of each year, said officer shall publish for ten consecutive days in some daily newspaper published in this State, a list of the corporations whose right to do business in this State has been forfeited for non-compliance with this act; Provided, That any corporation which shall within six months after such publication pay the tax and (\$5) five dollars additional thereto, for each month or fractional part of a month which shall elapse after such forfeiture, shall be relieved from the forfeiture of its rights to do business by reason of such failure, and when such tax and the said penalty are fully paid to the secretary of State, it shall be the duty of said officer to revive and reinstate said right to do business by erasing or cancelling the word "Forfeited" from his ledger, and substituting therefor the word "Revived," giving the date of such revival; Provided, further, That this chapter shall not be construed to repeal any law prescribing fees to be collected by the secretary of State.

TITLE CVIII. TRUSTS—CONSPIRACIES AGAINST TRADE.

- Art. 5313. Definition of "trusts."
 5314. Forfeiture of charter of corporation, when.
 5315. Duties of attorney-general in relation thereto.
 5316. Foreign corporations.
 5317. Quo warranto proceedings, etc.
 5318. Penalty for violation of this title.
 5319. Contracts, void, when.
 5320. Law cumulative.
 5321. Does not apply to agricultural products.
 5321a. Compulsory process.

Art. 5313. A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

See Penal Code, arts. 976 et seq.

Art. 5314. Any corporation holding a charter under the laws of the State of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Art. 5315. For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney-general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the State, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

Art. 5316. Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the State of Texas.

Art. 5317. The provisions of chapter 48, general laws of this State, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this chapter.

(Note.—The act of 1879, referred to in the preceding article, is title XCIII.)

Art. 5318. Each and every firm, person, corporation or association of persons who

Trusts—R. S., Arts. 5319-5321a. Trust conspiracies against trade—Pen. Code, Arts. 24, 976.

shall in any manner violate any of the provisions of this chapter shall for each and every day that such violation shall be permitted or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney-general or the district or county attorney to prosecute for and recover the same.

Art. 5319. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

Art. 5320. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State; Provided, This chapter shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organiza-

tion of laborers for the purpose of maintaining any standard of wages.

Art. 5321. Nothing in this chapter shall be held or construed to affect or destroy any rights which may have accrued, or to affect the right of the State to recover penalties, or to affect the right of the State to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this State, or affect the right of the State to maintain prosecutions for violations thereof, under any law of this State relating to trusts, for acts heretofore done.

Art. 5321a. Any court, officer or tribunal having jurisdiction of the offense defined in this chapter, or any district or county attorney or grand jury may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing articles. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify fully and without reservation.

THE PENAL CODE.

TITLE I. GENERAL PROVISIONS RELATING TO THE WHOLE CODE.

CHAPTER II.

Definitions.

Art. 24. "Person" includes the State or any corporation.

Art. 24. Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person," or any other general term, is used to designate the party whose property it is intended to protect, the provision of such penal law, and the protection thereby given shall extend to the property of the State, and of all public or private corporations.

TITLE XVIII. MISCELLANEOUS OFFENSES.

CHAPTER VII.

Trust Conspiracies against Trade.

Art. 976. Defines "trusts."

977. Corporations to forfeit charter for violation of this law.

978. Duty of attorney-general, etc.

979. Foreign corporations violating this act forbidden to do business.

980. Quo warranto proceedings.

981. Conspiracy against trade.

982. Requisites of indictment.

983. Requisites of proof.

984. Persons out of the State liable to indictment.

985. Associations violating this act to forfeit fifty dollars a day, recoverable on suit.

986. Contracts or agreements in violation hereof void.

987. The provisions hereof cumulative.

988. Exempts live stock and agricultural products in hands of producers.

Art. 988a. Penalty for combining.

988b. Requisites for indictment.

988c. Requisites of proof.

988d. Non-residents of the State liable.

Art. 976. A trust is a combination of capital, skill or acts by two or more persons, firms, corporation or associations or persons, or of either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade.

2. To limit or reduce the production, or increase or reduce the price of merchandise or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into, or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among them-

selves or others in the same or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

See R. S., arts. 5313 et seq.

Art. 977. Any corporation holding a charter under the laws of the State of Texas which shall violate any of the provisions of this law shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Art. 978. For a violation of any of the provisions of this law by any corporation mentioned herein it shall be the duty of the attorney-general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the State, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence.

Art. 979. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the State of Texas.

Art. 980. The provisions of chapter forty-eight, general laws of this State, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this law.

Art. 981. Any violation of either or all the provisions of this law shall be and is hereby declared a conspiracy against trade, and any person who may be or who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by a fine not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

Art. 982. In an indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a mem-

ber of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

Art. 983. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

Art. 984. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions, whether within or without the State.

Art. 985. Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this law shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney-general or the district or the county attorney to prosecute and recover the same.

Art. 986. Any contract or agreement in violation of the provisions of this law shall be absolutely void and not enforceable either in law or equity.

Art. 987. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

Art. 988. The provisions of this law shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

(Note.—Articles 988a, 988b, 988c and 988d, comprising the penal sections of the act of 1895, p. 112, appear to be cumulative of the preceding articles of this chapter.)

Art. 988a. If any person shall be or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

Trust conspiracies against trade — Pen. Code, Arts. 988b-988d.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption, below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them and themselves and others to prevent a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected, or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices,

rates, directions, conditions or orders of such combinations, shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

Art. 988b. In any indictment for an offense named in this law it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

Art. 988c. In prosecutions under this law it shall be sufficient to prove that a trust or combination as defined herein exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

Art. 988d. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions, whether within or without the State.

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UTAH.

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ACTS RELATING TO CORPORATIONS ENACTED IN 1898.

UTAH.

CONSTITUTION OF UTAH — 1895.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

- Sec. 18. Laws impairing obligation of contracts prohibited.
22. Private property not to be taken without compensation.
23. Grants of irrevocable franchises prohibited.

ARTICLE VI.

Legislative Department.

- Sec. 26. Special laws prohibited in certain cases.
27. Indebtedness of corporations to the State or to municipalities not to be released.
29. Certain powers must not be delegated.
31. State must not lend credit or subscribe to stock or bonds of corporations.

ARTICLE X.

Education.

- Sec. 3. Unclaimed shares and dividends go to public school fund.

ARTICLE XII.

Corporations.

- Sec. 1. Corporations, how formed.
2. Existing charters; corporations must file acceptance of Constitution.
3. Franchise must not be extended.
4. "Corporation" defined.
5. Limitations on issue of stock.
6. Foreign corporations.
7. Limitations on lease or alienation of franchise.
8. Street railroads not to be constructed without the consent of authorities.
9. Corporations must have known places of business and agents for process.
10. Corporations limited.
11. Property of corporations subject to eminent domain.
12. Common carriers.
13. Railroads not to consolidate with competing lines.
14. Rolling stock personal property.
15. Legislature may regulate transportation charges, etc.

- Sec. 16. Corporations must not bring armed men into the State.
17. Corporation officers restricted from holding municipal office.
18. Stockholders of banks, liability of.
19. Blacklisting prohibited.
20. Trusts and combinations prohibited.

ARTICLE XIII.

Revenue and Taxation.

- Sec. 2. All property taxed except; corporate stock not taxed when corporate property taxed.
3. Taxation to be just and uniform; certain corporations not to be taxed separately.
10. All property liable to taxation.

ARTICLE XVI.

Labor.

- Sec. 1. Rights of labor to be protected.
2. Board of labor conciliation.
3. Legislature shall prohibit.
4. Blacklisting prohibited.
5. Rights of recovery for injuries shall not be restricted.
6. Legislature shall pass laws for health and safety of employees.
7. Provisions of this article to be enforced.

ARTICLE I.

Declaration of Rights.

§ 18. No * * * law impairing the obligation of contracts shall be passed.

See art. VI, § 26; art. XII, § 15. Corporation may contract. § 322, subd. 1.

§ 22. Private property shall not be taken or damaged for public use without just compensation.

See art. XII, § 11.

§ 23. No law shall be passed granting irrevocably any franchise, privilege or immunity.

See art. XII, § 3.

Legislature; corporations — Const., Art. vi, §§ 26, 27, 29, 31; Art. x, § 3; Art. xii, §§ 1-6.

ARTICLE VI.

Legislative Department.

§ 26. The legislature is prohibited from enacting any private or special laws in the following cases:

* * * * *

16. Granting to an individual, association or corporation any privilege, immunity or franchise.

* * * * *

The legislature may repeal any existing special law relating to the foregoing subdivisions.

In all cases where a general law can be applicable, no special law shall be enacted.

Nothing in this section shall be construed to deny or restrict the power of the legislature * * * to establish and regulate the rates of freight, passage, toll and charges of railroads, toll-roads, ditch, flume and tunnel companies, incorporated under the laws of the State or doing business therein.

See art. I, § 18; art. XII, § 1. Right to operate a railroad when granted. Art. XII, § 8.

§ 27. The legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the State, or to any municipal corporation therein.

See art. I, § 18.

§ 29. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

§ 31. The legislature shall not authorize the State, or any county, city, town, township, district or other political subdivision of the State to lend its credit or subscribe to stock or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking.

ARTICLE X.

Education.

§ 3. * * * All unclaimed shares and dividends of any corporation incorporated under the laws of this State * * * shall be and remain a perpetual fund, to be called the State school fund, the interest of which only, together with such other means as the legislature may provide, shall be distributed among the several school districts according to the school population residing therein.

ARTICLE XII.

Corporations.

§ 1. Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corpora-

tions may be altered, amended or repealed by the legislature, and all corporations doing business in this State, may, as to such business, be regulated, limited or restrained by law.

See art. VI, § 26. Corporation, how formed. §§ 314 et seq.

§ 2. All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity; and no corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the secretary of State, an acceptance of the provisions of this Constitution.

See § 353. Acceptance of Constitution by foreign corporation. § 351.

§ 3. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

See art. I, § 23; art. VI, § 26.

§ 4. The term "corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

"Person" includes corporation. § 2505.

§ 5. Corporations shall not issue stock, except to bona fide subscribers thereof or their assignee, nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received, or labor done. The stock of corporations shall not be increased, except in pursuance of general law, nor shall any law authorize the increase of stock without the consent of the person or persons holding the larger amount in value of the stock, or without due notice of the proposed increase having previously been given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Stock may be paid in property. § 316.

§ 6. No corporations organized outside of this State, shall be allowed to transact business within the State on conditions more favorable than those prescribed by law to similar corporations organized under the laws of this State.

§ 7. No corporation shall lease or alienate any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor, or grantor, lessee or grantee, contracted or incurred in operation, use or enjoyment of such franchise or any of its privileges.

§ 8. No law shall be passed granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city or incorporated town, without the consent of the local authorities who have control of the street or highway proposed to be occupied for such purposes.

See art. VI, § 26.

§ 9. No corporation shall do business in this State, without having one or more places of business with an authorized agent or agents, upon whom process may be served; nor without first filing a certified copy of its articles of incorporation with the secretary of State.

Summons served on agent. § 2948. Requirements of foreign corporations. §§ 351, 352.

[In suing in Utah on a cause of action arising out of a sale of personality situated in that State, plaintiff foreign corporation was not "doing business" in the State, within Const., art. XII, § 9, so as to be required to file a certified copy of its articles. *Live Stock Commission Co. v. Range Valley Cattle Co.*, 50 Pac. Rep. 630.]

§ 10. No corporation shall engage in any business other than that expressly authorized in its charter, or articles of incorporation.

§ 11. The exercise of the right of eminent domain shall never be so abridged or construed, as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

See art. I, § 22.

§ 12. All railroad and other transportation companies are declared to be common carriers, and subject to legislative control; and such companies shall receive and transport each other's passengers and freight, without discrimination or unnecessary delay.

Legislature may regulate charges, etc. Art. XII, § 15.

§ 13. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a competing line.

Combinations prohibited. Art. XII, § 20. Trusts prohibited. §§ 1752 et seq.

§ 14. The rolling stock, and other movable property belonging to any railroad company

or corporation in this State, shall be considered personal property, and shall be liable to taxation and to execution and sale, in the same manner as the personal property of individuals, and such property shall not be exempted from execution and sale.

Stock personal property. § 330.

§ 15. The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, for correcting abuses, and preventing discrimination and extortion in rates of freight and passenger tariffs by the different railroads, and other common carriers in the State, and shall enforce such laws by adequate penalties.

See art. I, § 18. Railroads subject to legislative control. Art. XII, § 12.

§ 16. No corporation or association shall bring any armed person or bodies of men into this State for the preservation of the peace, or the suppression of domestic troubles without authority of law.

§ 17. No officer, employe, attorney or agent of any corporation, company or association doing business under, or by virtue of any municipal charter or franchise, shall be eligible to, or permitted to hold any municipal office, in the municipality granting such charter or franchise.

§ 18. The stockholders in every corporation, and joint-stock association for banking purposes, in addition to the amount of capital stock subscribed and fully paid by them, shall be individually responsible for an additional amount, equal to the amount of their stock in such corporation, for all its debts and liabilities of every kind.

Liability of stockholders. § 331.

§ 19. Every person in this State shall be free to obtain employment whenever possible, and any person, corporation, or agent, servant or employe thereof, maliciously interfering or hindering in any way, any person from obtaining, or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a crime. The legislature shall provide by law for the enforcement of this section.

See art. XVI, § 4. Blacklisting prohibited. §§ 1340, 1341.

§ 20. Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that pur-

Taxation; labor — Const., Art. xiii, §§ 2, 3, 10; Art. xvi, §§ 1-7.

pose, it may declare a forfeiture of their franchise.

Railroads not to consolidate. Art. XII, § 13.
Trusts prohibited. §§ 1752 et seq.

ARTICLE XIII.

Revenue and Taxation.

§ 2. All property in the State, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The word property, as used in this article, is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership; but this shall not be so construed as to authorize the taxation of the stocks of any company or corporation, when the property of such company or corporation represented by such stocks, has been taxed. * * *

See § 2501.

§ 3. The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the State, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. * * * Ditches, canals, and flumes owned and used by individuals or corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall not be owned, and used exclusively for such purpose.

§ 10. All corporations or persons in this State, or doing business herein, shall be subject to taxation for State, county, school, municipal or other purposes, on the real and personal property owned or used by them within the territorial limits of the authority levying the tax.

See Const., art. XIII.

ARTICLE XVI.

Labor.

§ 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

See §§ 1324-1347.

§ 2. The legislature shall provide by law, for a board of labor, conciliation and arbitration which shall fairly represent the interests of both capital and labor. The board shall perform duties, and receive compensation as prescribed by law.

§ 3. The legislature shall prohibit:

1. The employment of women, or of children under the age of fourteen years, in underground mines.

2. The contracting of convict labor.

3. The labor of convicts outside prison grounds, except on public works under the direct control of the State.

4. The political and commercial control of employes.

See art. I, § 18, and cross-references and §§ 1324-1335.

§ 4. The exchange of blacklists by railroad companies, or other corporations, associations or persons is prohibited.

See art. XII, § 19, and cross-references.

§ 5. The right of action to recover damages for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

§ 6. * * * The legislature shall pass laws to provide for the health and safety of employes in factories, smelters and mines.

See §§ 1336-39.

§ 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article.

REVISED STATUTES OF UTAH -- 1898.

TITLE XI.

Corporations.

- Ch. 1. General Incorporation.
2. Assessments.

CHAPTER I.

General Incorporation.

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337. Majority of stock, what constitutes.
338. What permissible.
339. Id.; how made.
340. What permissible; how made.
341. Resulting rights and duties.
351. Foreign corporations must file articles: other duties.
352. Penalties.
353. Rights and duties continued.

§ 314. Private corporations may be formed in the manner prescribed in this title, for any purpose for which individuals may lawfully associate. The number of incorporators shall not be less than five, at least one of whom must be a resident of this State.

At least one-third of directors must be residents.

§ 324. Term "corporation" includes what. Const., art. XII, § 4.

[Courts will hold to strict account all those who engage in the business of creating corporations that are insolvent from their inception. *Henderson v. Thurngren*, 9 Utah, 432; s. c., 35 Pac. Rep. 495.

It seems that a corporation cannot be held liable for anything done by promoters before its existence. *Long v. Bank*, 8 Utah, 104.

A corporation organized under United States laws and doing business in the territory of Utah is a domestic corporation of Utah. *Losee v. McCarty*, 5 Utah, 528.]

Corporations for Pecuniary Profit.

§ 315. The incorporators shall enter into an agreement in writing, signed by each of them and by at least three of their number acknowledged before the county clerk or any notary public of the county in which they have established, or intend to establish, their principal place of business, stating:

1. The name of the corporation.
2. The precinct or city where it is organized.
3. The names of the incorporators and their places of residence.
4. The time of its duration, which shall not in any case be less than three nor more than fifty years.
5. The pursuit or business agreed upon, specifying it in general terms.
6. The place of its general business.
7. The amount of stock each party has subscribed.
8. The amount of each share, and the limit of capital stock agreed upon.
9. The number and kind of officers, their qualifications and term of office, and the time and manner of their election, removal, and resignation, with the names of the officers to serve until the first general election; Provided, That in no case shall the number of directors be less than three nor more than twenty-five.
10. How many of the entire board of directors shall be necessary to form a quorum and be authorized to transact the business and exercise the corporate powers of the corporation; Provided, That a quorum shall not be less than one-fourth of the entire number.
11. Whether or not the private property of the stockholders shall be liable for its obligations.
12. Such additional clauses as the incorporators deem necessary for conducting the business of the corporation and for its future safety and welfare.

10. How many of the entire board of directors shall be necessary to form a quorum and be authorized to transact the business and exercise the corporate powers of the corporation; Provided, That a quorum shall not be less than one-fourth of the entire number.

11. Whether or not the private property of the stockholders shall be liable for its obligations.

12. Such additional clauses as the incorporators deem necessary for conducting the business of the corporation and for its future safety and welfare.

Corporations limited to business expressly authorized. Const., art. XII, § 10.

[Where defendant denies plaintiff's corporate existence, the burden of proving such existence is on plaintiff. *Dry Goods Co. v. Box*, 45 Pac. Rep. 629.

Subscriber to stock of defectively organized corporation estopped to deny validity of its or-

Articles of agreement; subscriptions; certificate of incorporation — R. S., §§ 316-321.

ganization, when. *Clay Co. v. Harvey*, 9 Utah, 497.

A corporation de facto will not be permitted, as to persons who have in good faith dealt with it as a corporation, to deny its corporate existence. *Liter v. Mining Co.*, 7 Utah, 487.

Where defendant denies plaintiff's corporate existence, the burden of proving such existence is on plaintiff. *Dry Goods Co. v. Box*, 45 Pac. Rep. 629.

Articles of incorporation under the general law, with provisions defining their effect, constitute the charter of a corporation. *Northern Point, etc., Co. v. Utah & S. L. Canal Co.*, 52 Pac. Rep. 168.]

§ 316. To the agreement prepared in accordance with the provisions of the preceding section, there shall be added the oath or affirmation of three or more of the incorporators taken before any officer duly authorized to administer an oath, to the effect that they have commenced, or it is bona fide their intention to commence and carry on, the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid or is able to and will pay the amount of the stock subscribed for by him: Provided, That said acknowledgment shall not be made until at least ten per cent. of the stock subscribed by each stockholder and not less than ten per cent. of the capital stock of the corporation has been paid in; Provided further, That where subscriptions to the capital stock of any corporation formed under the provisions of this chapter shall consist, in whole or in part, of property necessary to the pursuit agreed upon, there must appear in the articles of incorporation a description of the property so taken with a statement of the fair cash value thereof, which statement, except in the case of corporations organized for mining or irrigating purposes, shall be supplemented by the affidavits of three persons, to the effect that they are acquainted with said property, and that it is reasonably worth the amount in cash for which it was accepted by the corporation; and the owners of such property shall be deemed to have subscribed such amount to the capital stock of such corporation as will represent the fair estimated cash value of so much of such property, or of such interest therein, as they may have conveyed to such corporation by deed actually executed and delivered.

Stock not to be issued except for value. Const., art. XII, § 5.

[Where property taken in payment for stock is worthless, the holders will be liable as on unpaid subscriptions. *Hardware Co. v. Milling Co.*, 45 Pac. Rep. 290.

A corporation cannot be held liable for anything done by its promoters before its existence. *Long v. Bank*, 8 Utah, 104; s. c., 29 Pac. Rep. 878.

Courts will hold to strict account all those who engage in the business of creating corporations that are insolvent from their inception. *Hen-*

lerson v. Turngren, 9 Utah, 432; s. c., 35 Pac. Rep. 495.

Informalities of organization are waived by the subscriber who makes no objection thereto, and who pays thereafter several installments on his stock. *Ogden Clay Co. v. Harvey*, 9 Utah, 497; s. c., 35 Pac. Rep. 510.]

§ 317. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the corporation with intent to defraud any stockholder or creditor or the public, which oaths shall be filed in the office of the county clerk.

§ 318. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the county clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office.

§ 319. As soon as the agreement and oath or affirmation and oaths of office are filed, the county clerk shall issue, under his seal, a certificate to the effect that the agreement and oath or affirmation and oaths of office have been filed in his office, which certificate, together with a copy of the articles of agreement and oath or affirmation, must be filed in the office of the secretary of State, who shall issue under the great seal of the State a certificate that a copy of the articles of agreement and oath or affirmation, containing the required statement of facts, has been filed in his office, which shall be sufficient to constitute the association a body corporate with succession as specified in the agreement, which certificate, or a certified copy of the same, shall be evidence of the due incorporation of the corporation.

§ 320. It shall be the duty of the county clerk and of the secretary of State, upon payment of the lawful fee therefor, to make certified copies of corporation papers recorded or filed in their respective offices, which copies shall be prima facie evidence of the facts therein stated.

§ 321. Non-use for a period of two years of a franchise acquired under the provisions of this title shall be deemed a forfeiture of the corporate rights, privileges, and franchises.

Quo warranto proceedings. §§ 3609 et seq.

[An attempt by board of directors to grant an agent of the company an irrevocable power of attorney is a virtual dissolution of the corporation and is void. *Davis v. Flagstaff Mining Co.*, 2 Utah, 74.

A mere transfer of its property for the benefit of its creditors, held not a dissolution of a corporation. *Wyeth Hardware & Mfg. Co. v. James-Spencer Co.*, 15 Utah, 110; s. c., 47 Pac. Rep. 604.]

Powers.

§ 322. The corporation in its name shall have power

1. To make all contracts necessary and proper to effect its purposes and conduct its authorized business.

2. To sue and be sued.

3. To have a seal, which it may alter at pleasure.

4. To buy, use, and sell, or dispose of personal property.

5. To buy, use, sell, or dispose of all such real estate as may be necessary for its general business, and such as shall be necessary for the collection of its debts, or judgments, or decrees in its favor, and to disburse out of profits actually earned and on hand such dividends from time to time as the directors may deem prudent.

6. It may make all such by-laws, rules, and regulations, not inconsistent with law or with other corporate rights and vested privileges, as may be necessary to carry into effect the object of the association; and such by-laws, rules, and regulations may be made in a general meeting of the stockholders, or by the board of directors subject to the approval of the stockholders.

Inviolability of contracts. Const., art. I, § 18. Corporate powers limited to business expressly authorized. Const., art. XII, § 10. Limitation of actions against corporations. § 2897. Summons. §§ 2938, 2948. Verification of pleadings. §§ 2983-2984. Rules of pleading. § 3000. Injunction. § 3061. Attachment. § 3073. Receiver. §§ 3114, 3115, 3118. Execution. § 3240. Quo warranto. §§ 3609-3626.

[A corporation has no powers except such as are granted by its charter or by necessary implication. *Davis v. Mining Co.*, 2 Utah, 75.

A contract made by the directors of a corporation not authorized by the stockholders thereof, or by the charter, is void. *Id.*

A corporation is not bound by an unauthorized contract made by its board of directors; such contract can be treated as ultra vires. *Flagstaff Co. v. Patrick*, 2 Utah, 304.

In absence of fraud or mistake, a judgment against a corporation is conclusive upon stockholders. *Wilson v. Kiesel*, 9 Utah, 398.

It seems that a corporation cannot be held liable for anything done by promoters before its existence. *Long v. Bank*, 8 Utah, 104.

If a trustee for a corporation is violating his trust, any stockholder may bring action against him, joining the corporation as a defendant, and cause his removal, and the property held by him sold, and have the proceeds equitably applied. *Fisk v. Patton*, 7 Utah, 399.

Legal capacity to sue is an ordinary incident to a corporation, and where corporate existence is alleged, objections to its capacity to sue cannot be taken by demurrer. *Mfg. Co. v. Reed*, 3 Utah, 506.

Where caption of complaint gives the title of corporation with the addition "a corporation under the laws of Iowa," and the corporation was referred to in the allegations by its corporate name, the averment of corporate capacity is sufficient. *Saunders v. Nursery*, 6 Utah, 431.

A corporation organized under United States laws, and doing business in Territory of Utah, is a domestic corporation of Utah, and a writ of judgment issued out of the District Court of said Territory was rightfully served on said corporation in such district. *Loose v. McNairy*, 5 Utah, 528.

Where defendant denies plaintiff's corporate existence, the burden of proving such existence is on plaintiff. *Dry Goods Co. v. Box*, 45 Pac. Rep. 629.

A resolution which directs the president and secretary to execute company notes for money loaned to it by stockholders confers authority to execute notes for money loaned, the recovery of which is barred by the statute of limitations. *Leavitt v. Oxford Co.*, 3 Utah, 265.

It is not necessary to prove by the laws of the State where organized that a corporation is authorized to hold or transfer real estate; such power is determined by the laws of the government in which it is doing business. *Tarpy v. Salt Co.*, 5 Utah, 494; s. c., 17 Pac. Rep. 631.

When title is traced through corporations, which are not parties to the record and with which defendant has no privity, proof of their existence as corporations de facto by their articles of incorporation duly made, is sufficient prima facie. *Id.*

A foreign corporation which engages in business of buying and selling real estate, but takes the title to the land in the name of the trustee, does not forfeit its title to such real estate or lose the right to enforce the trust. *Fisk v. Patton*, 7 Utah, 399.

No law exists in Utah affecting the right of an insolvent corporation to prefer certain creditors; hence it may do so. *Wyeth, etc., Co. v. James, etc., Co.*, 15 Utah, 110; s. c., 47 Pac. Rep. 604.

A resolution adopted at a stockholders' meeting, held to be a by-law, though not adopted with the required formalities. *Ogden Clay Co. v. Harvey*, 9 Utah, 497; s. c., 35 Pac. Rep. 510.

The purpose of a corporation and the powers it is authorized to exercise must be determined from its charter, not from the opinions of witnesses. *Northern Point, etc., Co. v. Utah & S. L. Canal Co.*, 52 Pac. Rep. 168.

Though a corporation entered into a contract by a wrong name, the contract will be binding. *Northern Point, etc. Co. v. Utah & S. L. Canal Co.*, 52 Pac. Rep. 168.

A corporation may ratify an unauthorized contract within its powers. *Northern Point, etc., Co. v. Utah & S. L. Canal Co.*, 52 Pac. Rep. 168.

The doctrine of ultra vires will not be applied to a corporate contract when it would defeat the ends of justice. *Bear River V. O. Co. v. Hanley*, 15 Utah, 506; s. c., 50 Pac. Rep. 611.]

§ 323. If the franchise of any corporation organized under this chapter shall expire

by limitation or by forfeiture, the corporation may nevertheless continue for the purpose of winding up its affairs.

Officers — Duties and Removal.

§ 324. The corporate powers of the corporation shall be exercised by the board of directors, who shall be stockholders in the company, and at least one-third of whom shall be residents of this State. The number of directors named in the agreement of incorporation as being sufficient to form a quorum for the transaction of business shall constitute a board, and every decision of a majority of the board so formed shall be valid as a corporate act.

At least one Incorporator must be resident of State. § 314. Fraud by directors, penalty. § 4411.

[The power of the directors is not a delegated authority, and when the transaction of the business of the company will be facilitated by the appointment of one or more of the board, such appointment may be made. *Leavitt v. Oxford S. M. Co.*, 3 Utah, 265; s. c., 1 Pac. Rep. 356.

In the absence of statute or by-law fixing the times of meetings, all directors' meetings, of which proper notice was given, are presumed regular, unless contrary affirmatively appears. Id.

A majority of board may bind corporation on any matter within power of the board. Id.

Where the signers of a note place the words "president" and "secretary" after their names, having first signed the corporate name, it will not be regarded as a joint note, where the intent to make it such is not shown. *Armstrong v. Land & Canal Co.*, 14 Utah, 450; s. c., 48 Pac. Rep. 690.

Right of director to issue treasury stock, and validity of board of directors elected on a vote of such stock, determined. *Coyt v. Freed*, 15 Utah, 426; s. c., 49 Pac. Rep. 533.

A president of a corporation, on sale of its property by execution, could not bind the company by consenting to its purchase by a third person, to be held for himself. *Victor G. & S. Mining Co. v. Bank*, 15 Utah, 391; s. c., 49 Pac. Rep. 826.

Where an officer is acting partly for himself and partly for the corporation, notice to him will not affect the company. Id.

An officer of a corporation cannot bind it, when acting at the same time for another corporation. *Bear River V. O. Co. v. Hanley*, 15 Utah, 506; s. c., 50 Pac. Rep. 611.

Where officers of a corporation wrongfully convey its real estate to another in payment for stock, and the secretary of the latter company issues stock to himself, he holds it in trust for the first corporation. *Bear River V. O. Co. v. Hanley*, 15 Utah, 506; s. c., 50 Pac. Rep. 611.

Open exercise of power by an officer held rightful under an implied delegated authority. *Moyle v. Congregational Society*, 50 Pac. Rep. 806.]

§ 325. Officers after having duly qualified may continue to exercise the duties of their offices until their successors shall be duly

elected or appointed and qualified, unless sooner removed in the manner prescribed by the articles of incorporation or by-laws, or, in case no provision be made therein for such removal, according to the provisions of this chapter.

[Where a corporation has held a certain person out as its president and agent, his letters are competent evidence against the corporation, and it will not be heard to deny that he had authority to act for it. *Liter v. Mining Co.*, 7 Utah, 487.]

§ 326. If from any cause the officers shall not be elected at the time provided in the agreement or by-laws, such election may be held at a special meeting of the stockholders to be duly called at any time by the directors, or, upon their failure to call such a meeting for a period of three months after the regular time of such election, at the call of any two stockholders.

§ 327. A director or other officer may be removed from office as provided in the agreement or by-laws, or, in case there is no such provision, then by a vote of two-thirds of the outstanding capital stock, at a meeting held after previous notice of the time and place and of the intention to propose such removal. Special meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by stockholders holding at least one-half of the shares of stock outstanding. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is no secretary, the call may be addressed directly to the stockholders. In case of the removal of a director or other officer, the vacancy may be filled by election at the same meeting, or by the board of directors, unless otherwise provided in the articles or by-laws.

[Any stockholder may bring an action against a trustee for a corporation who is violating his trust, joining the corporation as defendant, and cause the trustee to be removed and the property held by him sold and the proceeds equitably applied. *Fisk v. Patton*, 7 Utah, 400; s. c., 27 Pac. Rep. 1.]

§ 328. It shall be the duty of the corporation to keep true and correct books of its proceedings and business.

§ 329. The books of every corporation organized under the laws of this State must be so kept as to show the original stockholders, their interest, the amount paid on their shares, and all transfers thereof; all books of any corporation shall, at all reasonable hours, be subject to the inspection of any bona fide stockholder of record.

Misdemeanor to refuse inspection. § 4415.

Stock, Stockholders and Meetings.

§ 330. Stock shall be deemed personal property, and the delivery of a stock certificate of a corporation, together with a written transfer of the same signed by the owner, to a bona fide purchaser or pledgee for value, shall be deemed a sufficient transfer of the title as against any creditor of the transferor and all other persons whatsoever. But no such transfer shall affect the right of the corporation to treat the holder of record as the holder in fact for the purpose of voting and of receiving dividends until such transfer is made upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred.

Rolling stock, etc., personal property. Const., art. XII, § 14.

[A corporation may be compelled to issue stock to person entitled thereto. *Relch v. Rebellion Co.*, 3 Utah, 254.]

The fact that a transfer of stock was not entered before it was sold under execution against the transferor held not to defeat the transferee's right to have the same transferred to him on the books, nor his right to receive dividends, where the purchaser at the execution sale took with full knowledge. *Live Stock Commission Co. v. Range Valley Cattle Co.*, 50 Pac. Rep. 630.]

§ 331. The property of the corporation and the unpaid stock shall be liable for the debts of the corporation; but the individual property of any holder of full-paid capital stock of any corporation organized since March eighth, eighteen hundred and ninety-four, or that hereafter may be organized, under the laws of this State, except as otherwise expressly provided in this title, shall not be liable for the corporate obligations, nor shall assessments be levied on such stock for any purpose whatever, except to such extent and in such manner as may be expressly provided in the articles of incorporation.

Liability of stockholders. Const., art. XII, § 18. May be changed only by unanimous consent.

§ 338. Liability of holder of full-paid stock. § 354. Assessments. §§ 354 et seq.

[A delinquent subscriber to capital stock, who is also a creditor of the corporation, can, after issuance of execution upon his claim reduced to judgment, maintain an action against the corporation and delinquent subscribers to capital stock, but he must suffer a deduction from his claim proportionately to his own delinquency. *Wilson v. Kiesel*, 9 Utah, 397; s. c., 35 Pac. Rep. 488.]

If a corporation is not made a defendant to a creditor's bill to collect unpaid subscriptions, and the objection is not set up by demurrer or answer, it is waived. *Henderson v. Turngren*, 9 Utah, 432; s. c., 35 Pac. Rep. 495. Such creditor's bill should be based upon a judgment against

the corporation and a return of nulla bona and not by the original claim. Id.

The corporate assets of an insolvent corporation constitute a trust fund, first, for the payment of its creditors; second, for its distribution among stockholders, equally and ratably. *Mercantile Co. v. Co-op. Instn.*, 12 Utah, 213; 42 Pac. Rep. 869.

An allegation of a return of execution nulla bona against the corporation held not sufficient as an allegation of insolvency, in an action to enforce stockholders' liability. *Hardware Co. v. Milling Co.*, 45 Pac. Rep. 200.

A stockholder cannot avoid his liability by showing payment for the stock in worthless property. Id.

The assets of an insolvent corporation are not a trust fund to be equally distributed among creditors, but they cannot be appropriated for purposes foreign to its business, or distributed among its stockholders, until all its debts are paid. *Wyeth, etc., Co. v. James, etc., Co.*, 15 Utah, 110; s. c., 47 Pac. Rep. 604.]

§ 332. The stockholders of any corporation may regulate the mode of making subscriptions to its capital stock and of calling in the same by by-laws or by express contract.

§ 333. The corporation shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

[A delinquent subscriber to the capital stock of a corporation, who is also a creditor, can, after the issuance of an execution upon his claim, maintain an action against the corporation and delinquent subscribers to capital stock, but a proportionate reduction to the amount delinquent on his stock must be made. *Wilson v. Kiesel*, 9 Utah, 397; 35 Pac. Rep. 488.]

§ 334. Unless required by the agreement or by-laws, no notice need be given of annual or stated meetings of the stockholders. Special meetings shall be called and notice thereof given in such manner as may be prescribed in the agreement or by-laws. When not otherwise specified in the agreement or by-laws, special meetings of the stockholders may be called by the president, by any three directors, or by any number of stockholders owning not less than one-third of the capital stock, and notice thereof shall be given by personal service of the notice upon each stockholder at least five days before the day fixed for the meeting, or by advertisement in some newspaper published in the State, having general circulation in the county in which the principal place of business of the corporation is located. If publication be made in a daily newspaper, the notice shall be published in each issue of the paper for a period of two weeks, and if in a weekly newspaper, for three successive issues next before the day of meeting.

§ 335. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or

her own right, or held by him or her in trust for others, and such votes may be given in person or by an authorized agent, or by proxy.

§ 336. The articles of incorporation or by-laws may provide what proportion of the outstanding capital stock shall be represented at a stockholders' meeting as a requisite to the holding of the same, and for adjournment from day to day in the absence of a sufficient representation, and what proportion of the stock so represented shall be necessary to determine any question or election; but in the absence of such provisions, a lawful meeting may be held by the stock represented at the meeting, whatever its amount, and every question or election thereat shall be decided by a majority of the votes cast.

§ 337. Whenever any portion of the capital stock of a corporation is held by the corporation, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Amendments.

§ 338. The articles of incorporation of any corporation now existing or that hereafter may be organized under the laws of this State may be amended in any respect conformable to the provisions of this chapter by a vote representing at least two-thirds of the outstanding capital stock thereof at a stockholders' meeting called for that purpose, as hereinafter prescribed; Provided, That the original purpose of the corporation shall not be altered, nor shall the capital stock be diminished to an amount less than fifty per cent. in excess of the indebtedness of the corporation; And provided further, That the liability of the holder of full-paid capital stock for assessments or for the indebtedness of the corporation shall not be changed without the consent of all the stockholders.

Limitation of increase of stock. Const., art. XII, § 5.

[Reduction of capital stock below the amount of indebtedness is fraudulent as against creditors without notice. *Leedum v. Earls, etc., Co.*, 12 Utah, 172; s. c., 42 Pac. Rep. 208.]

§ 339. Notice of such meeting shall be given by the president or secretary of such corporation in some newspaper printed in the English language and having a general circulation in the county where the corporation has its principal place of business in this State for at least twenty-one days, stating the nature of the proposed change or amendment and the time and place of such meeting. Such change or amendment, when adopted, shall be signed by the president and secretary of such corporation and be filed and re-

corded in the manner provided for the filing and recording of original articles. The secretary of State shall issue a certificate of amendment, which shall be evidence of the facts therein stated.

Consolidation.

§ 340. Corporations of the same kind, engaged in the same general business in the same vicinity, existing, or that hereafter may be organized under the laws of this State, may consolidate upon such terms and conditions conformable to law as shall be agreed upon by a vote representing at least two-thirds of the outstanding capital stock of each of said corporations, at a special meeting of each thereof, upon notice stating the time, place, and object of such meeting, published for at least thirty days prior thereto in a newspaper having general circulation within the county where such corporation has its principal place of business. Such consolidation shall be evidenced by a certificate under the corporate seal of the respective corporations, signed by the president and secretary of each, briefly reciting the act or acts sought to be accomplished and describing the property sought to be conveyed or assigned, together with the name of the new corporation, with such other provisions as the law may require to be inserted in original articles of incorporation, and such others, being conformable to law, as may be deemed necessary to perfect such consolidation; which certificate shall be filed and recorded in the manner provided for the filing and recording of original articles of incorporation, and a copy thereof, duly certified by the county clerk, shall be filed in the office of the secretary of State, whose certificate shall constitute such consolidated corporations a new corporation.

Consolidation of competing railroads forbidden. Const., art. XII, § 13.

§ 341. Upon the consummation of such consolidation, all the rights, privileges, and franchises of each of said consolidating corporations, and all the property, real and personal, and all subscriptions and debts due on whatever account, shall be deemed to be transferred to and vested in such new corporation without further act or deed; and such consolidation shall not relieve the consolidating corporations, or either of them, or the stockholders, from any liabilities, nor shall it extinguish or limit any franchise or right; but all debts, liabilities, and duties of either of said corporations shall thenceforth attach to such new corporation, and be enforceable against it to the same extent as if incurred or contracted by it.

Foreign Corporations.

§ 351. All corporations, not organized under the laws of this State, before doing

business within this State shall file with the secretary of State and with the county clerk of the county wherein their principal office in the State is situated, a certified copy of their articles of agreement, certificate of incorporation, and by-laws, and, in case of alteration or amendment of said articles of incorporation or by-laws, shall file certified copies of such alterations or amendments with each of said officers, and shall also, before doing business within the State, by resolution of their board of directors, accept the provisions of the constitution of this State, and also designate some person residing in the county in which its principal place of business in the State is situated, upon whom process issued by authority of or under any law of the State may be served. A copy of such resolutions shall be certified by the president and secretary, under seal of the company, and filed in the office of the secretary of State and in the office of the county clerk of the county in which its principal office is situated.

See Const., art. XII, §§ 6, 9.

[In a suit by an employee against a foreign corporation for services, the corporation having dealt with employee as a corporation, plaintiff will not be heard to deny the corporate existence. *Liter v. Ozokerite Mining Co.*, 7 Utah, 487; s. c., 27 Pac. Rep. 690.]

§ 352. Any such corporation failing to comply with the provisions of the foregoing section shall not be entitled to the benefits of the laws of this State relating to corporations; and any person acting as agent of a foreign corporation which shall neglect or refuse to comply with the foregoing provisions, shall be deemed guilty of a misdemeanor, and shall be personally liable on any and all contracts made in this State by him for and in behalf of such company during the time that it shall remain so in default; Provided, That this section shall not be held to apply to persons acting as agents for foreign corporations of a special or temporary purpose or for a purpose not within the ordinary business of such corporations, nor shall it apply to attorneys at law as such.

See Const., art. XII, § 9.

Corporations Heretofore Existing.

§ 353. Every corporation heretofore lawfully organized under any law of Utah and existing at the time of the taking effect of this revision, shall continue in existence, with all the rights, privileges, powers, duties, and obligations conferred or imposed by the laws under which it has heretofore existed, as modified or controlled by the provisions of these statutes.

Existing corporations, regulations. Const., art. XII, § 2.

CHAPTER II.

Assessments.

- Sec. 354. Full paid stock non-assessable.
 355. Stock not full paid.
 356. Amount of assessment.
 357. Subsequent assessment, previous one unpaid.
 358. Order levying.
 359. Notice of levy.
 360. Id. Service and publication.
 361. Delinquencies. Notice of sale.
 362. Id.
 363. Id. Publication.
 364. Id. Effect on sale.
 365. Sale at auction.
 366. Highest bidder.
 367. Sale to corporation.
 368. Id. Effect.
 369. Extension of time.
 370. Errors and omissions.
 371. Actions to recover stock sold irregularly.
 372. Proof of mailing, publication, and sale.
 373. Waiving proceedings for sale. Action.

§ 354. The full-paid capital stock of any corporation organized since March eighth, eighteen hundred and ninety-four, or that may hereafter be organized under the laws of this State, shall not be assessable for any purpose whatever, except to such extent and in such manner as may be expressly provided in the articles of incorporation; Provided, That if such stock is made assessable and the manner of levying the assessment is not provided for, it shall be levied in the manner and form hereinafter prescribed.

See § 331.

[It seems that above section requires such stock to be in fact fully paid, whatever the articles of incorporation may provide on the stock. *Henderson v. Thorngren*, 9 Utah, 432; s. c., 35 Pac. Rep. 495.

Under the statutes of Utah directors have right to levy an assessment to pay debts, upon fully paid-up capital stock, but unless the articles expressly provide otherwise the remedy is limited to a forfeiture and sale of stock. *Gary v. Mining Co.*, 9 Utah, 464; s. c., 35 Pac. Rep. 494.

The word "assessment," where used in the statutes in regard to private corporations, seems to include both calls and statutory assessments, and no distinction seems to be made between the two terms. *Id.*]

§ 355. The board of directors of any corporation, whose capital stock shall not be full paid, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed and unpaid capital stock thereof in such manner and at such times as may be prescribed in the articles of incorporation, or, if not therein provided for, in the manner and form and to the extent hereinafter prescribed.

Unpaid stocks liable for debts, § 331.

[Subscriber to stock in a defectively organized corporation, who was present at the meetings where the informalities occurred, and made no objection thereto, but paid several instalments on his stock and received the same, must be held to have waived the defects and informalities. *Clay Co. v. Harvey*, 9 Utah, 497.]

Where capital stock remains unpaid at time of organization, such stock becomes a trust fund for payment of the corporate liabilities and may be called in by directors, who are trustees of the fund, at such times and in such amounts as may be provided by the by-laws or articles of agreement. *Id.* When a person becomes a stockholder his liability is completed and is liable for calls as long as he remains the owner of the stock. *Id.*

Where no method was prescribed by the by-laws or the articles of agreement for collecting unpaid subscriptions, but at a meeting of the subscribers held when the company was formed a resolution was adopted making calls for unpaid subscriptions at certain dates thereafter, several of which calls defendant, and subscriber, paid, *Held*, that the resolution became a by-law, although not adopted with required formalities. *Id.*

A corporation may be compelled to issue stock to person entitled thereto. *Reich v. Rebellion Co.*, 3 Utah, 254.]

Where an assessment on the capital stock has been made by the board of directors de jure, and there is no irregularity in the levy, the assessment is valid. *Chandler v. Sheep Rock M. & M. Co.*, 15 Utah, 434; *s. c.*, 49 Pac. Rep. 535.

When a reasonable effort has been made to dispose of the stock set apart by the articles of agreement as a working capital, and no offer has been obtained therefor, the board may levy an assessment for the purpose of paying debts. The word "assessment" includes both "calls" and statutory assessments. *Gary v. York Mining Co.*, 9 Utah, 464; *s. c.*, 35 Pac. Rep. 494.]

§ 356. No assessment shall exceed ten per cent. of the outstanding capital stock of the corporation, unless the corporation is unable to meet its obligations or satisfy the claims of its creditors, in which case the assessment may be for the full amount unpaid upon its capital stock, or for any less amount than may be sufficient to meet such obligations or claims.

§ 357. No assessment shall be levied while a portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment;

2. The collection of such previous assessment has been enjoined or restrained; or

3. The assessment falls within the provisions of the next preceding section.

[Where the collection of an assessment on capital stock has been temporarily enjoined pending suit, and on the day fixed for a hearing there is no appearance and no continuance, the restraint

on the collection of the assessment is at an end. *Miles v. Sheep Rock M. & M. Co.*, 15 Utah, 436; *s. c.*, 49 Pac. Rep. 536.]

§ 358. Every order levying an assessment, unless otherwise provided in the articles of incorporation, must specify the amount thereof, when, to whom, and where payable; fix a day subsequent to the full term of the publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for a sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 359. Upon making the order the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied on the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment may remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with the cost of advertising and expense of sale.

(Signature of secretary, with location of office.)

§ 360. The notice must be served personally on each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks, in some newspaper, of general circulation, in the place designated in the articles of incorporation as the principal place of business.

§ 361. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name of corporation in full. Location of principal place of business.) Notice. There are delinquent upon the following described stock, on account of assessment levied on the day of, 18..., (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders as follows: (Names, number of certificates, number of shares, and amount), and in accordance with law (and an order of the board of directors made on the day of,

Assessments on stock — R. S., §§ 362-372.

18..., if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold at the (particular place) on the day of, 18..., at the hour of, to pay delinquent assessments thereon, together with the cost of advertising and expenses of the sale.

(Name of secretary, with location of office.)

§ 362. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares, and amount due thereon, together with the fact that the certificates of such shares have not been issued, must be stated.

§ 363. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale; when published in a weekly or semi-weekly paper, it must be published in each issue thereof for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 364. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or expenses of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and expenses of advertising and sale.

§ 365. On the day, at the place, and at the time appointed in the notice of sale, the secretary shall, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying shall only be required to pay the actual expenses of advertising in addition to the assessment.

§ 366. The person offering at such sale to pay the assessment and expenses for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation, on payment of the assessment and expenses.

§ 367. If at the sale of stock no bidder offers the amount of the assessments and expenses due, the same may be bid in and purchased by the corporation through the secretary, president, or any director thereof, at the amount of the assessments and expenses due; and the amount of the assessments and expenses shall be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation shall be made on the books thereof.

While the stock remains the property of the corporation it is not assessable nor shall any dividends be declared thereon, but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

§ 368. All purchases of its own stock by the corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of the majority of all the remaining shares.

§ 369. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time by order of the directors entered on the records of the corporation for any period or periods aggregating not more than six months; but no order extending the time for the performance of any act specified in any notice shall be effectual unless notice of such extension of postponement is appended to and published with the notice to which the order relates.

§ 370. No assessment is invalidated by a failure to make publication of the notices herein provided for, nor by the non-performance of any act required in order to enforce payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

§ 371. No action shall be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action shall be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale is made.

§ 372. Affidavits made by the secretary of the mailing of notices shall be prima facie evidence thereof. The publication of notices relating to assessments may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer shall be prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom and for what price, and of the fact of the purchase money being paid. The affidavit shall be filed in the office of the corporation, and copies of the same certified by the secretary thereof.

shall be prima facie evidence of the fact therein stated. Certificates signed by the secretary and under the seal of the corporation shall be prima facie evidence of the contents thereof.

§ 373. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part thereof.

TITLE XXXVI.

Labor.

- Ch. 1. Board of labor.
 2. Eight Hour Law.
 3. Employment of females and children.
 4. Blacklisting.
 5. Fellow servants defined.
 6. Wages, a preferred debt.
 7. Attorneys' fees in suit for wages.

CHAPTER I.

Board of Labor.

- Sec. 1324. Appointment of members. Term. Oath.
 1325. Secretary. Rules.
 1326. Board to inquire as to labor controversies.
 1327. To make decision public.
 1328. Application for hearing.
 1329. Notice of hearing.
 1330. Witnesses.
 1331. Decision.
 1332. Id. How long binding.
 1333. Mediation where strike threatened.
 1334. Compensation of members.
 1335. Sheriff to serve process.

§ 1324. The governor, by and with the consent of the senate, shall appoint three persons, not more than two of whom shall belong to the same political party, who shall constitute the State board of labor, conciliation and arbitration. One of the members shall be an employer of labor, one an employe, who shall be selected from some labor organization, and the third, who shall be the chairman, shall be a person who is neither an employer of manual labor nor an employe. Each member of said board as now constituted shall serve for the period of his appointment, and at the expiration of his term his successor shall be appointed for the term of four years. If a vacancy occurs at any time, the governor shall, in the same manner appoint some one to serve the unexpired term. Each member of the board shall, before entering upon the duties of

his office, take the oath of office required by law.

Authority for creation of board. Const., art. XVI, § 2.

§ 1325. The board shall select from its members a secretary, and shall establish suitable rules of procedure.

§ 1326. When any controversy or difference, not involving questions which may be the subject of an action at law or suit in equity, exists in this State between an employer, whether an individual, copartnership, or corporation, employing not less than ten persons, and his employes, the board shall, upon application as herein provided, and as soon as practicable thereafter, visit the locality of the dispute, and make a careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust the dispute, and make a written decision thereof.

§ 1327. This decision shall at once be made public and be recorded in a proper book of record to be kept by the secretary of said board; and a short statement thereof shall be published in the annual report hereinafter provided for.

§ 1328. The application shall be signed by the employer, or by a majority of his employes in the department of the business in which the controversy or difference exists, or by both parties, and shall contain a concise statement of the grievances complained of and a promise to continue on in business or at work without any lockout or strike until the rendition of a decision by said board, if said decision shall be rendered within three weeks of the date of filing the said application.

§ 1329. As soon as may be after receiving said application, the secretary of the board shall cause public notice to be given of the time and place for the hearing thereon; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given. When such request is made, notice shall be given to the parties interested in such manner as the board may order, and the board may, at any stage of the proceedings, cause public notice, notwithstanding such request.

§ 1330. The board shall have the power to summon as witnesses by subpoena any operative or expert in the department of business affected, and any person who keeps the records of wages earned in these departments, or any other person, to administer oaths, to examine witnesses, and to require the production of books, papers, and records.

§ 1331. Upon the receipt of such application and after such notice, the board shall proceed as before provided and render a written decision, and the findings of the majority

Board of labor; hours of labor; employment of children, etc.—R. S., §§ 1332-1341.

shall constitute the decision of the board, which decision shall be open to public inspection, shall be recorded upon the records of the board, and published in an annual report to be made to the governor before the first day of January of each year.

§ 1332. Said decision shall be binding upon the parties who join in said application, or who have entered their appearance before said board, until either party has given the other notice in writing of his or their intention not to be bound by the same, and for a period of ninety days thereafter. Said notice may be given to said employes by posting in three conspicuous places where they work.

§ 1333. Whenever it shall come to the knowledge of the State board that a strike or lockout is seriously threatened in the State, involving any employer and his employes, if the employer is employing not less than ten persons, it shall be the duty of the State board to put itself into communication, as soon as may be, with such employer and employes, and to endeavor by mediation to effect an amicable settlement between them, and endeavor to persuade them to submit the matters in dispute to the State board.

§ 1334. The members of the board shall each receive a per diem of three dollars for each day's service while actually engaged in the hearing of any controversy between any employer and his employes, and five cents per mile for each mile necessarily traveled in going to and returning from the place where engaged in hearing such controversy, the same to be paid by the parties to the controversy, appearing before said board, and the members of said board shall receive no compensation or expenses for any other service performed under this chapter.

Under Const., art. XXI, §§ 1, 2, members shall accept fees in full compensation.

§ 1335. Any notice or process issued by said board shall be served by any sheriff to whom the same may be directed, or in whose hands the same may be placed for service, without charge.

CHAPTER II.

Eight-Hour Law.

Sec. 1336. On public works.

1337. In mines and smelters.

§ 1336. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county, or municipal governments.

§ 1337. The period of employment of workmen in all underground mines or workings, and in smelters and all other institutions for the reduction or refining of ores or metals, shall be eight hours per day, except in cases of emergency where life or property is in imminent danger. Any per-

son, body corporate, agent, manager, or employer who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

See Const., art. XVI.

[Above act held to be constitutional. State v. Holden, 14 Utah, 96; s. c., 46 Pac. Rep. 1105; Ex parte Holden, 14 Utah, 71; s. c., 46 Pac. Rep. 756.]

CHAPTER III.

Employment of Females and Children.

Sec. 1338. In mines and smelters forbidden.

1339. Proprietor to provide seats for female help.

§ 1338. It shall be unlawful for any person, firm or corporation to employ any child under fourteen years of age, or any female, to work in any mine or smelter in the State of Utah. Any person, firm, or corporation who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

See Const., art. XVI, § 3.

§ 1339. The proprietor, manager, or person having charge of any store, shop, hotel, restaurant, or other place where women or girls are employed as clerks or help therein, shall provide chairs, stools, or other contrivances where such clerks or help may rest when not employed in the discharge of their respective duties. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

See Const., art. XVI, § 3.

CHAPTER IV.

Blacklisting.

Sec. 1340. Forbidden.

1341. Penalty.

§ 1340. No company, corporation, nor individual shall blacklist, or publish, or cause to be published or blacklisted, any employe, mechanic, or laborer, discharged or voluntarily leaving the service of such company, corporation, or individual, with intent and for the purpose of preventing such employe, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.

Exchange of blacklists forbidden. Const., art. XII, § 19; art. XVI, § 1.

§ 1341. If any person or any officer or agent of any company, corporation, or individual, shall blacklist, or publish, or cause to be published, any employe, mechanic, or laborer, discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employe, me-

chanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual, or shall in any manner conspire or contrive, by correspondence, or otherwise, to prevent such discharged employe from securing employment, he shall be deemed guilty of a felony and, upon conviction, shall be fined not less than five hundred dollars, nor more than one thousand dollars, and be imprisoned in the State prison not less than sixty days nor more than one year.

CHAPTER V.

Fellow Servants Defined.

Sec. 1342. Who are vice-principals.

1343. Who are fellow servants.

§ 1342. All persons engaged in the service of any person, firm, or corporation, foreign or domestic, doing business in this State, who are intrusted, by such person, firm, or corporation as employer with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employe in the performance of any duties of such employe, are vice-principals of such employer and are not fellow servants.

§ 1343. All persons who are engaged in the service of such employer, and who, while so engaged, are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being intrusted by such employer with any superintendence or control over his fellow employes, are fellow servants with each other; Provided, That nothing herein contained shall be so construed as to make the employes of such employer fellow servants with other employes engaged in any other department of service of such employer. Employes who do not come within the provisions of this section shall not be considered fellow servants.

CHAPTER VI.

Wages, a Preferred Debt.

Sec. 1344. When business is suspended.

1345. Claim. Notice to persons interested.

1346. Contest of claim. Costs.

§ 1344. When the property of any company, corporation, firm, or person shall be seized upon by any process of any court of this State, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver, assignee, or trustee, the debts owing to employes, laborers, or servants, for work or labor performed within one year next preceeding the seizure or transfer of such property, shall be considered and treated as preferred debts, and such laborers, servants, or employes, shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to

pay them in full, then the same shall be paid to them pro rata, after paying costs.

§ 1345. Any such employe, laborer, or servant desiring to enforce his claim for wages under this chapter shall present a statement, under oath, showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person, or court charged with such property, within ten days after the seizure thereof on any writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver, assignee, or trustee; any person with whom any such claim shall have been filed, shall give immediate notice thereof by mail to all persons interested; and it shall be the duty of the person or the court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized, if the claim be not contested as provided in the next succeeding section.

§ 1346. Any person interested may contest such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, within ten days after the notice of presentment of said statement and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof, before any part thereof shall be paid, and the party contesting shall be made a party defendant in any such action and shall have the right to contest such claim, and the prevailing party shall recover costs.

CHAPTER VII.

Attorneys' Fees in Suits for Wages.

Sec. 1347. When Allowed. Amount.

§ 1347. Whenever a mechanic, artisan, miner, laborer, servant, or employe shall have cause to bring a suit for wages earned and due according to the terms of his employment, and shall establish by the decision of the court or verdict of the jury that the amount for which he has brought suit is justly due, and that demand had been made in writing, at least fifteen days before suit was brought, for a sum not to exceed the amount so found due, then it shall be the duty of the court before which the case shall be tried, to allow to the plaintiff a reasonable attorney's fee in addition to the amount found due for wages, to be taxed as costs of suit. In a justice's court such attorney's fee shall not be more than five dollars, and in the district court, not more than ten dollars, except in cases on appeal from a justice's court to the district court, when the plaintiff may recover an attorney's fee, not exceeding twenty-five dollars.

TITLE LIV.

Pools and Trusts.

Sec. 1752. Unlawful combination, what is.

1753. Members guilty of conspiracy to defraud.

1754. Trusts declared unlawful.

1755. Penalties. Firms and corporations.

1756. Id. Individuals.

1757. Unlawful contracts void.

1758. Corporate franchise forfeited.

1759. Id. Notice to corporation.

1760. Id. Attorney general to bring action, when.

1761. Guilty person liable for treble damages.

1762. "Person" includes "corporation."

§ 1752. Any combination by persons having for its object or effect the controlling of the prices of any professional services, any products of the soil, any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and declared unlawful.

Trusts prohibited. Const., art. XII, § 20. Consolidation of railroads prohibited. Id., § 13.

§ 1753. Any person or association of persons who shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination, confederation or understanding with any other person or persons, to regulate or fix the price of any article of merchandise or commodity; or shall enter into, become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to punishment as hereinafter provided.

§ 1754. It shall not be lawful for any corporation to issue or to own trust certificates; or for any corporation, agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract, or agreement with any person or persons, the purpose or effect of which combination, contract, or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hand of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article, or to monopolize any part of the trade or commerce within this State.

§ 1755. If a corporation, a company, a firm, or association shall be found guilty of a violation of any provision of this title, it shall be punished by a fine in any sum not less than one hundred dollars nor more than two thousand dollars

for the first offense; and for the second offense, not less than five hundred dollars nor more than five thousand dollars; and for the third offense, not less than five thousand dollars nor more than ten thousand dollars; and for every subsequent offense shall be liable to a fine of fifteen thousand dollars.

§ 1756. Any president, manager, director, or other officer, agent, or receiver of any corporation, company, firm, or association, or any member of any company, firm, or association, or any individual found guilty of a violation of any provision of this title, may be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not more than one year, or by both, in the discretion of the court before which such conviction may have been had.

§ 1757. Any contract or agreement in violation of any provision of this title shall be absolutely void.

§ 1758. Any corporation organized or existing under the laws of this State that shall violate any provision of this title shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine.

§ 1759. It shall be the duty of the secretary of State, upon satisfactory evidence that any corporation or association of persons, incorporated or operating under the laws of this State, has entered into any trust, combination, or association, as mentioned in the preceding provisions of this title, to give notice to such corporation that unless it withdraws from and severs all business connections with said trust, combination, or association, its corporate right and franchise will be revoked at the expiration of thirty days from the date of such notice.

§ 1760. At the expiration of thirty days, if such withdrawal or severance be not theretofore made, the secretary of State shall cause a certified statement of the facts to be filed in the office of the attorney-general of the State, who shall commence, or direct any county attorney in the State to commence, an action, in any district of the State of competent jurisdiction, to forfeit and revoke the corporate rights and franchises of such corporation. On the final decision of the same, should the defendant be found guilty of a violation of any of the provisions of this title, the court shall render judgment that the charter, corporate rights, and franchises of such corporation be revoked and the secretary of State shall thereupon make publication of such revocation in four newspapers in general circulation in four of the largest cities of the State.

§ 1761. In case any person or persons, shall do, cause to be done, or permit to be done, any act, matter, or thing in this title prohibited or declared to be unlawful, such person or persons shall be liable to the person or persons injured thereby for treble

the amount of damages sustained in consequence of any such violation.

§ 1762. The words, "person," or "persons," whenever used in this title shall be deemed to include corporations, companies, and associations, existing under or authorized by the laws of either the United States, or any of the territories, any State, or any foreign country.

Trusts prohibited. Const., art. XII, § 20.

TITLE LVI.

Real Estate.

CHAPTER III.

Acknowledgments.

Sec. 1989. Forms of certificate. Individual. Corporators.

§ 1989. A certificate of acknowledgment to any instrument in writing affecting the title to any real property in this State may be substantially in the following form:

STATE OF UTAH.

County of

On the day of A. D. personally appeared before me A. B., the signer of the above instrument, who duly acknowledged to me that he executed the same.

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF UTAH.

County of

On the day of A. D. personally appeared before me A. B., who being by me duly sworn (or affirmed) did say, that he is the president (or other officer or agent as the case may be,) of (naming the corporation) and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by resolution of its board of directors as the case may be), and said A. B. acknowledged to me that said corporation executed the same.

TITLE LXVII.

Taxation.

- Ch. 1. Property liable to taxation.
- 2. Definitions.
- 3. Assessment of property.

CHAPTER I.

Property Liable to Taxation.

Sec. 2501. All property taxed, unless exempted.

§ 2501. All property in this State, not exempt under the laws of the United States, or under the Constitution of this State, shall be taxed in proportion to its value, as hereinafter provided.

See Const., art. XIII.

CHAPTER II.

Definitions.

Sec. 2505. Terms used in this title defined.

§ 2505. Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them, to wit:

1. The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal and mixed, capable of private ownership; but this shall not be so construed as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks, has been taxed.

5. The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

8. The term "person" as used in this title shall be construed to include partnerships, corporations, and associations of persons.

"Corporation" defined. Const., art. XII, § 4.

CHAPTER III.

Assessment of Property.

Sec. 2513. Franchises, where assessed.

2517. Assessor may require statement.

2530. Corporate franchise and stock, where assessed.

§ 2513. All property and franchises owned by railroad, street railroad, car, telegraph, and telephone companies operating in more than one county in this State, must be assessed by the State board of equalization as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

§ 2517. He (the assessor) may require from any person a statement under oath, setting forth specifically all the real and personal property owned by such person, or in his possession or under his control, at twelve o'clock M., on the first Monday of February. Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

3. All property belonging to, or claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

Actions: limitation, etc.—R. S., §§ 2530, 2897, 2938, 2948, 2983, 2984, 3000, 3061.

§ 2530. The capital stock and franchises of corporations and persons, except as may be otherwise provided, must be listed and taxed in the county, city, town, or district where the principal office or place of business of such corporation or person is located;

if there be no principal office or place of business in the State, then at the place in the State where any such corporation or person transacts business.

Franchises, where assessed. § 2513.

CIVIL PROCEDURE.

TITLE LXXIII.

- Ch. 5. Limitations.
8. Manner of commencing actions.
15. Verification.
16. General rules of pleading.
21. Injunction.
22. Attachment.
24. Receivers.
41. Execution.
66. Quo warranto.
72. Voluntary dissolution of corporations.

CHAPTER V.

Limitations.

Sec. 2897. Action against directors or stockholders three years after discovery.

§ 2897. This chapter does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

CHAPTER VIII.

Manner of Commencing Actions.

Sec. 2938. Action, how commenced.

2948. Summons, how served.

§ 2938. A civil action shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought or by the service of the summons.

§ 2948. The summons must be served by delivering a copy thereof as follows:

* * * * *

5. If the defendant is a domestic corporation, to the president or head of the corporation, secretary, treasurer, cashier, or managing agent thereof. If the defendant is a foreign corporation, or non-resident joint-stock company or association, to the president, secretary, treasurer, or other officer thereof, or to the person designated by such corporation, company, or association as one upon whom process may be served. If no such person can be found, then upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent, or other agent having the management, direction, or control of any property of such corporation, company, or association. If none of the persons named in this sub-

division can be found in the county in which such action is commenced, then service may be made as provided herein, upon any of such persons in any county in this State.

Corporation must have agent for process. Const., art. XII, § 9; R. S., §§ 351, 352.

CHAPTER XV.

Verification.

Sec. 2983. Verification, how made and by whom.

2984. Certain allegations admitted unless denial verified.

§ 2983. Every pleading must be subscribed by the party or his attorney. * * * When a corporation is a party, the verification may be made by any officer or agent thereof. Amendments may be made without being verified, unless a new and distinct cause of action or counterclaim is thereby introduced, in which case they shall be verified as other pleadings.

§ 2984. In all actions, allegations * * * of the existence of a corporation * * * shall be taken as true, unless the denial of the same be verified by the affidavit of the party, his agent or attorney.

CHAPTER XVI.

General Rules of Pleading.

Sec. 3000. Corporate, partnership, etc., capacity pleaded generally.

§ 3000. A plaintiff suing as a corporation, * * * or in any other way implying corporate * * * capacity, need not state the facts constituting such capacity or relation, but may aver the same generally, or as a legal conclusion, and where a defendant is held in such capacity or relation a plaintiff may aver such capacity or relation in the same general way.

CHAPTER XXI.

Injunction.

Sec. 3061. Business of corporation suspended only upon notice. Exception.

§ 3061. An injunction to suspend the general and ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officer or

Attachment; receivers; quo warranto — R. S., §§ 3073, 3114, 3115, 3118, 3240, 3609, 3610.

agent of the corporation, except when the State is a party to the proceeding.

CHAPTER XXII.

Attachment.

Sec. 3073. Writ, how executed.

§ 3073. The officer to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in section three thousand and sixty-nine be not given, as follows:

* * * * *
5. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

CHAPTER XXIV.

Receivers.

Sec. 3114. Receivers, when appointed.

3115. Appointment on dissolution of corporation.

3118. Powers of receivers.

§ 3114. A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

5. In the cases where the corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

[Courts will hold to strict account all those who engage in the business of creating corporations that are insolvent from their inception. *Henderson v. Turngren*, 9 Utah, 432.

Courts of equity have no power to appoint a receiver for a corporation in absence of a statute conferring such power. *Davis v. Mining Co.*, 2 Utah, 75.

When the business of a corporation is mismanaged, and its property is appropriated by its officers, held, a receiver should be appointed. *Stevens v. So. Ogden Land, B. & Imp. Co.*, 47 Pac. Rep. 848.]

§ 3115. Upon the dissolution of any corporation the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that

shall remain over, among the stockholders or members.

Voluntary dissolution of corporation, §§ 3661-3667.

§ 3118. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

CHAPTER XLI.

Execution.

Sec. 3240. Property liable to execution. Personal property not affected until levy.

§ 3240. * * * Shares and interests in any corporation or company, * * * and all other property not capable of manual delivery, may be attached on execution in like manner as on writs of attachment.
* * *

CHAPTER LXVI.

Quo Warranto.

Sec. 3609. Action in name of State, against whom.
3610. Id.; against a corporation.

3611. Attorney-general to begin action, when.

3612. Id.; upon whose relation. Security for costs.

3615. Action. All claimants to same office made defendants.

3616. Jurisdiction in supreme or district court.

3617. Application to file complaint. Notice to defendant.

3618. Summons, when issued; when unnecessary.

3619. Pleadings.

3620. Judgment of ouster. Costs. Fine where State is party.

3621. Judgment ousting director of corporation.

3622. Action for damages within one year.

3623. Judgment against corporation, dissolution or restraint.

3624. Quo warranto actions take precedence.

3625. Procedure in supreme as in district courts. Jury.

3626. Appeal does not stay judgment of ouster.

§ 3609. A civil action may be brought in the name of the State:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this State, or an office in a corporation created by the authority of this State.
* * *

3. Against an association of persons who act as a corporation within this State without being legally incorporated.

§ 3610. A like action may be brought against a corporation:

1. When it has offended against a provision of an act by or under which it was created, altered, or renewed, or any act altering or amending such acts.

2. When it has forfeited its privileges and franchises by non-user.

3. When it has committed or omitted an act which amounts to a surrender or a forfeiture of its corporate rights, privileges, and franchises.

4. When it has misused a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred.

No corporation shall engage in any business except that authorized. Const., art. XII, § 10. Non-use of franchise for two years deemed a forfeiture. § 321.

§ 3611. The attorney-general, when directed by the governor, shall commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action.

§ 3612. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section thirty-six hundred and nine, he may require security for costs to be given as in other cases.

§ 3615. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

§ 3616. An action under this chapter can be brought in the supreme court of the State, or in the district court of the proper county.

§ 3617. Upon application for leave to file a complaint, the court or judge may, in its discretion, direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the minutes of the court, or the fact shall be indorsed by the judge on the complaint, which shall then be filed.

§ 3618. When the complaint is filed without leave and notice, or upon leave and notice in case all the defendants do not appear, a summons shall issue and be served as in other cases. When all the defendants appear to oppose the filing of the complaint no summons need issue.

§ 3619. The pleadings shall be as in other cases.

§ 3620. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered

that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs. The court may also, in its discretion, in actions to which the State is a party, impose upon the defendant a fine not exceeding five thousand dollars, which fine when collected must be paid into the State treasury.

§ 3621. When the action is against a director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and judgment of induction entered in favor of the person who was entitled to be declared elected at such election.

§ 3622. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation.

§ 3623. When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises, or has not used the same during a term of two years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be enjoined from the continuance of such offense or the exercise of such power.

§ 3624. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern shall, on motion of the attorney-general, or of the attorney of the party, require as speedily a trial of the merits of the case as may be consistent with the rights of the parties.

§ 3625. Actions under this chapter commenced in the supreme court, shall be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court shall have the same authority to issue process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial shall be the same as in the district court. If a jury is required to determine an issue of fact, the court shall order the question to be tried before a jury in the district court of any county designated in such order, and that the verdict be certified to the supreme court.

§ 3626. If the action is commenced in the district court, an appeal may be taken from the final judgment by either party to the supreme court as in other cases; but if there is judgment of ouster against the defendant, there shall be no stay of execution or proceedings pending such appeal.

Voluntary dissolution; crimes by corporations, etc.— R. S., §§ 3661-3667, 4064, 4065, 4375.

CHAPTER LXXII.

Voluntary Dissolution of Corporation.

- Sec. 3661. Corporation may be dissolved upon its application.
 3662. Application; contents of.
 3663. Id.; by whom made. Verification.
 3664. Order to file application. Notice by publication.
 3665. Objections to application.
 3666. Hearing and notice to objectors. Decree.
 3667. Judgment-roll. Appeal.

§ 3661. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

Receiver may be appointed. § 3115.

[A corporation can only be dissolved in the manner prescribed by law. *Davis v. Mining Co.*, 2 Utah, 75.]

§ 3662. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members.

2. That all claims and demands against the

corporation have been satisfied and discharged.

§ 3663. The application must be made by or in behalf of the board of directors, or, should the board decline to make the same, by any stockholder, and must be verified in the same manner as a complaint in a civil action.

§ 3664. If the judge is satisfied that the application is in conformity with this chapter, he must order it to be filed with the clerk and that the clerk give not less than thirty nor more than fifty days notice of the application, by publication in some newspaper having general circulation in the county.

§ 3665. At any time before the expiration of the time of publication, any person may file his objections to the application.

§ 3666. After the time of publication has expired, the court may, upon five days notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true must declare the corporation dissolved.

§ 3667. The application, notices, proof of publication, objections, if any, and declaration of dissolution, constitute the judgment-roll; and from the judgment an appeal may be taken as from judgments in other civil actions.

PENAL CODE.

TITLE LXXV.

Ch. 1. Preliminary provisions.

44. Embezzlement.
 49. Frauds relating to corporations.

CHAPTER I.

Preliminary Provisions.

- Sec. 4064. Penalty for felony of a corporation.
 4065. Penalty for misdemeanor of a corporation.

§ 4064. * * * In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a felony, and there is no other punishment prescribed by law, such corporation is punishable by a fine of not less than five hundred and not more than ten thousand dollars.

Criminal action against corporation. §§ 5071-5078.

§ 4065. * * * In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a misdemeanor, and there is no other punishment prescribed by

law, such corporation is punishable by a fine not exceeding one thousand dollars.

CHAPTER XLIV.

Embezzlement.

Sec. 4375. Embezzlement by officer, agent, etc.

§ 4375. Every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation, public or private, who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes the same with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

CHAPTER XLIX.

Frauds Relating to Corporations.

- Sec. 4408. Fraud in subscriptions for stock.
 4409. Fraud in organizing corporation or increasing capital stock.
 4410. Unauthorized use of name in prospectus.
 4411. Misconduct of directors.
 4412. Agent of insolvent bank receiving deposits.
 4413. Fraud or misconduct of agent of corporation.

Frauds relating to corporations — R. S., §§ 4408-4413.

Sec. 4414. Making false reports of corporation or bank.

4415. Refusal of inspection of corporate books.

4416. Railroad creating debt in excess of available means.

4417. Id. Validity of debt not affected.

4418. Director presumed to have knowledge.

4419. Concurrence of director presumed if present.

4420. When assent presumed if director absent.

4421. Foreign corporation on same footing as local.

4422. " Director " defined.

§ 4408. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed; and every person who signs to any such subscription or agreement the name of any person, knowing that such person has no means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Formation of corporations. §§ 314-323.

§ 4409. Every officer, agent, or clerk of any corporation, or of any person proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than one year nor more than ten years.

Limitation on Insurance and Increase of capital stock. Const., art. XII, § 5.

[A court will hold to strict account all those who engage in the business of creating corporations that are insolvent from their inception. *Henderson v. Turngren*, 9 Utah, 432.]

§ 4410. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

§ 4411. Every director of any stock corporation who concurs in any vote or act of

the directors of such corporation or any of them, by which it is intended either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such corporation,—is guilty of a misdemeanor.

Dividends may be paid out of profits earned and on hand. § 322.

§ 4412. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker who receives any deposits, knowing that such bank or banker is insolvent, is guilty of a felony.

§ 4413. Every director, officer, or agent of any corporation or association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association; and every director, officer, agent, or member of any corporation or association who embezzles, abstracts or wilfully misapplies any of the money, funds, or credits of the corporation or association; or who, without authority from the directors, issues or puts in circulation any of the notes of the corporation or association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the corporation or association, with intent, in either case, to injure or defraud the corporation or association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the corporation or association, or any agent appointed to examine the affairs of any such corporation or association; and every person who with like intent aids or

abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned in the State prison not less than one nor more than ten years and be fined in any sum less than ten thousand dollars.

§ 4414. Every director, officer, or agent of any corporation or joint-stock association, and every private banker who knowingly makes or concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in this chapter, is guilty of a misdemeanor.

§ 4415. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Books subject to inspection of bona fide stockholders. § 329.

§ 4416. Every officer, agent, or stockholder of any railroad company, who knowingly assents to or has an agency in contracting, any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions and exclusive of its real estate, is guilty of a misdemeanor.

§ 4417. The last section does not affect the

validity of a debt created in violation of its provisions, as against the company.

§ 4418. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

§ 4419. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 4420. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

§ 4421. It is no defense to a prosecution for a violation of any of the provisions of this chapter, that the corporation was one created by the laws of another State, government, or country, if it was one carrying on business or keeping an office therefor within this State.

§ 4422. The term "director" as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CRIMINAL PROCEDURE.

TITLE LXXVI.

CHAPTER LIII.

Proceedings against Corporations.

Sec. 5071. Complaint against corporation. Requisites of summons.

5072. Id. Form of summons.

5073. Id. Service of summons.

5074. Preliminary examination of corporation.

5075. Id. Certificate of discharge or of probable cause.

5076. Prosecution by information or indictment.

5077. Id. Summons. Same proceedings as against a person.

5078. Execution against corporation for fine, etc.

§ 5071. Upon a complaint against a corporation, the magistrate must issue a summons,

signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge, the time to be not less than ten days after the issuing of the summons.

§ 5072. The summons must be substantially in the following form:

STATE OF UTAH,
County of

The State of Utah to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place) on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. for (designating the offense generally). Dated at, this day of, 18.... G. H. Justice of the Peace (or as the case may be).

Criminal proceedings; fees of secretary of State — R. S., §§ 5073-5078; Act, Feb. 9, 1897.

§ 5073. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 5074. At the time appointed in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as those proceedings are applicable.

§ 5075. After hearing the evidence, the magistrate must certify upon the complaint, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint, the certificate and other documents, if any, as prescribed in section forty-six hundred and eighty-six.*

§ 5076. If the magistrate's return shows that there is sufficient cause to believe the corporation guilty of the offense charged,

the county attorney or grand jury must proceed thereon as in the case of a natural person held to answer.

§ 5077. Whenever an information is filed or indictment found against a corporation, it must be summoned to appear as provided in the code of civil procedure. The corporation may appear by counsel. If it does not appear, a plea of not guilty must be entered. In either case, proceedings thereupon must be had as if the defendant were a natural person.

§ 5078. Whenever a fine and costs, or either, shall be imposed upon a corporation on conviction, judgment therefor may be executed by the sheriff of the county out of the real and personal property of such corporation in the same manner as a judgment in a civil action.

Penalty for felony by corporation. § 4064. For misdemeanor. § 4065.

ACTS RELATING TO CORPORATIONS ENACTED IN 1897.

Act 1. Fees of the secretary of State.
2. Relating to elections.

Act 1.

Fees of the Secretary of State.

AN ACT amending section 11, of chapter 61 of the Laws of Utah of 1896, regulating the fees required to be charged and collected by the secretary of State.

Be it enacted by the Legislature of the State of Utah:

Section 1. That section 11 of chapter 61 of the Laws of Utah of 1896, entitled "An Act defining the duties of the secretary of State, fixing his bond, and regulating the fees for services performed in his office," be amended to read as follows, to-wit:

§ 11. The secretary of State, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record or other document or paper on file in his office, fifteen cents per folio.

2. For affixing certificate and seal of State, one dollar; for affixing seal and signature, without certificate, fifty cents.

3. For receiving and filing each original or certified copy of articles of incorporation he shall charge and collect the sum of twenty-five cents on each one thousand dollars of capital stock, of any company or corporation; Provided, That in no case shall the aggregate sum charged and collected from any corporation exceed twenty-five hundred dollars; and provided further, That the same sums shall be charged and collected for receiving and filing certified copies of articles of incorporation or of amendments increas-

ing the capital stock of foreign corporations hereafter organized for the purpose of operating property or carrying on business in this State.

4. For issuing each certificate of incorporation, five dollars.

5. For receiving and recording each official bond, two dollars.

8. For filing notice of appointment of agent, five dollars.

9. For filing notice of removal of place of business, five dollars.

10. For filing each certified copy of an amendment to articles of incorporation, increasing the capital stock of any corporation and issuing certificate thereof, twenty-five cents for each one thousand dollars of increase of such capital stock.

11. For filing each certified copy of other amendments to articles of incorporation, and issuing certificate thereof, five dollars.

12. For filing each annual statement of insurance company, twenty-five dollars.

13. For issuing certificate of authority to each agent of insurance company, five dollars.

14. For receiving and filing articles of incorporation and by-laws of foreign corporations, not included in the proviso to subdivision 3 of this section, twenty-five dollars.

§ 2. This act shall take effect upon approval. (Approved Feb. 9, 1897.)

Act 2.

Elections.

AN ACT providing for elections, for the punishment of election offenses and for election contests and repealing sundry acts relating to elections, election offenses, and election contests, and all acts or parts of acts inconsistent with the provisions of this act.

* Provides that magistrate must return papers to district court.

Chapter 8.

Election Offenses.

* * * * *

7. * * * * * It shall be unlawful for any employer, either corporation, association, company, firm or person in paying its, their or his employes the salary or wages due them, to inclose their pay in "pay envelopes" on which there is written or printed any political mottoes, devices or arguments, containing threats, express or implied, intended or calculated to influence the political opinion, views, or action of such employes. Nor shall it be lawful for any employer, either corporation, association, company, firm or person, within ninety days of any election provided by law, to put up or otherwise exhibit in its, their, or his factory, workshop, mine, mill, boarding-house, office, or other establishment or place where its, their, or his employes may be working or be present in the course of such employment, any hand bill, notice, or placard, containing any threat, notice or information, that in case any particular ticket or candidate shall or shall not be elected, work in its, their, or his establishment shall cease in whole or in part, or its, their, or his establishment be closed, or the wages of its, their, or his workmen be reduced; or other threats, express or implied, intended or calculated to influence the political opinions or actions of its, their, or his employes. Any person or persons, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and any person, whether acting in his individual capacity or as an officer or agent of any corporation, so guilty of such misdemeanor shall be punished as hereinafter prescribed.

S. It shall be unlawful for any corporation or any officer or agent of any corporation to influence or attempt to influence, by force, violence, or restraint, or by inflicting or

threatening to inflict any injury, damage, harm, or loss, or by discharging from employment or promoting in employment, or by intimidation, or otherwise in any manner whatever to induce or compel any employe to vote or refrain from voting at any election provided by law, or to vote or refrain from voting for any particular person or persons, measure or measures, at any such election. Any such corporation, or any officer or agent of such corporation, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and be subject to the penalty hereinafter provided, and in addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this State.

19. Any person entitled to a vote at a general election held within this State, shall, on the day of such election, be entitled to absent himself from any employment in which he is then engaged or employed for a period of two hours between the time of opening and the time of closing the polls, and any such absence shall not be sufficient reason for the discharge of any such person from such service or employment, and such voter shall not, because of so absentsing himself, be liable to any penalty, nor shall any deduction be made on account of such absence, from his usual salary or wages except when such employe is employed and paid by the hour; Provided, That application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employe may absent himself as aforesaid. Any person or corporation who shall refuse to his or its employes the privilege hereby conferred, or who shall subject an employe to a penalty or reduction of wages, because of the exercise of such privilege, or who shall, directly or indirectly violate the provisions of this title, shall be deemed guilty of a misdemeanor.

(Approved March 11, 1897.)

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VERMONT.

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VERMONT.

CONSTITUTION OF VERMONT.

PROVISIONS RELATING TO CORPORATIONS.

CHAPTER I.

Declaration of Rights.

ARTICLE II.

Private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

[There is no implied contract by the State in a charter of a private corporation that its property, or even the franchises itself, shall be exempt from the common liability of the property of individuals to be taken for public use. *White River T. Co. v. R. R. Co.*, 21 Vt. 590.

An act of the legislature may authorize the taking of the franchises of a turnpike corporation for a public highway. *Armington v. Barnet*, 15 Vt. 745.

To bring a case within this provision of the Constitution, there should be such a taking of the property as divests the owner of all title to or control over the property taken, and amounts to an unqualified appropriation of it. *Livermore v. Jamaica*, 23 Vt. 361.

How far a railroad company is liable upon general principles, or under the constitutional pro-

vision, to make compensation for private property taken for public use, considered. *Hatch v. R. R. Co.*, 25 Vt. 50.

Under Constitution of this State, private property is, upon compensation made in money, subservient to public uses when necessity requires it, but to no other uses. But legislature cannot finally determine that a use is public. *Tyler v. Beacher*, 44 Vt. 648.

Private property cannot be taken for private purposes. In re *Barre Water Co.*, 62 Vt. 27; s. c., 20 Atl. Rep. 109. See *Foster v. Bank*, 57 Vt. 128.]

CHAPTER II.

Plan or Frame of Government.

Sec. 9. Powers of the legislature.

§ 9. The representatives so chosen * * * may * * * grant charters of incorporation. * * *

See § 3674.

[In case of a public grant emanating from the same power that can create a corporation, the very grant or charter creates and gives the competency to take, and as a corporation, if necessary to that end. *Lord v. Bigelow*, 8 Vt. 445.]

STATUTES OF VERMONT—1894.

TITLE I. CONSTRUCTION OF STATUTES.

CHAPTER I.

Construction of Statutes.

Sec. 17. "Seal."
21. "Person."

§ 17. When the seal of a * * * corporation is required to be affixed to a paper, the word "seal" shall include an impression of the official seal made upon paper alone, or by means of a wafer or wax affixed thereto.

[Corporation may adopt any seal they choose, for the time, the same as a natural person — as a private seal, instead of the corporate seal — to a replevin bond. *Bank v. R. R. Co.*, 30 Vt. 159.
The sealing a deed with a corporate seal does not import nor include a signing by the corporation. *Isham v. Iron Co.*, 19 Vt. 230.]

§ 21. The word "person" may extend and be applied to bodies corporate and politic.

Corporation defined. § 3673. Includes what. § 3675. See § 355.

TITLE V. GENERAL ASSEMBLY.

CHAPTER XVII.

Applications to the General Assembly.

Sec. 191. Notices of petitions which affect private corporations.

§ 191. Notices of other petitions which affect individuals or private corporations may be given by serving such individuals and corporations with a copy of such petition at least twelve days before the session of the general assembly, or by publication, as provided in the preceding section.

TITLE X. TAXATION.

Ch. 26. Taxable property, where and to whom taxed.
29. Grand list.
31. Taxation of corporations.

CHAPTER XXVI.

Taxable Property, Where and to Whom Taxed.

Sec. 355. Word "person" includes what.
362. Shares of stock, etc., exempt.
365. Manufactories; quarries; mines.
373. Property on land of United States.

Sec. 378. Corporate stock, where and to whom assessed.

379. Tax on non-resident's stock; how paid.
380. Officers to make returns.
381. Pledged stock, how returned.
382. Officer fined if return not made.
383. Deduction in assessing for stock.
384. Corporation fined if return not made.

§ 355. The word "person" when used in this title shall include a partnership, association or corporation.

See § 21, and cross-references.

§ 362. The following property shall be exempt from taxation:

III. Shares of stock in a corporation situated in another State, when all the stock of such corporation is taxed in such State to the holders, whether residing within or without such State, or when the corporation is taxed in such State for all its stock.

V. Stock in a railroad corporation in this State.

VI. Real estate used in operating a railroad, for a period of eight years from the time when trains for public traffic and accommodation commence running on such railroad in or through a town.

See § 379.

[Shares of stock in a Canadian bank which pays direct taxes in Canada proportionate to amount of its paid-up capital, are exempt from taxation as against residents in this State. *Foster v. Stevens*, 63 Vt. 175; s. c., 22 Atl. Rep. 78. The word "State," as used in subdivision III, refers to foreign countries as well as to other States of the Union. *Id.* See, also, *Smalley v. Burlington*, 63 Vt. 443; s. c., 22 Atl. Rep. 611.]

§ 365. Manufacturing establishments, (except for manufacturing pulp, rough-sawn lumber or charcoal,) quarries, mines and such machinery, tramways, appliances and buildings as are necessary for the prosecution of the business, machinery put into unoccupied buildings, and all capital and personal property used in such business, if the amount invested exceeds one thousand dollars, may be exempted from taxation not exceeding ten years from the commencement of business if the town so votes. Such real and personal estate shall be appraised and set in grand list and the termination of the exemption noted against it.

[See *Lumber Co. v. Orne*, 48 Vt. 90.]

§ 373. The property of a railway or other corporation having a right of way over or location upon lands acquired by the United States, shall be taxed like other similar property.

§ 378. Shares of stock in corporations, except railroad corporations, shall be set in the list like other personal estate to the owner thereof, in the town where he resides, if he resides in the State, otherwise in the town where the corporation issuing such stock has its principal place of business.

Corporate stock is personalty. § 3687.

[Taxation of national bank stock. See *Clapp v. Burlington*, 42 Vt. 579; *Bank v. Rutland*, 52 id. 463.]

§ 379. Taxes assessed on such stock of non-residents shall be paid by the corporation, and it shall hold such stock and the dividends thereon as security for such payment, and may deduct the amount from any dividends payable to such shareholders.

See § 362.

[Taxing a non-resident stockholder. See *St. Albans v. Car Co.*, 57 Vt. 68.]

§ 380. The cashiers of banks organized under the laws of this State, or of the United States, and the executive officers, by whatever name called, of steamboat and transportation companies, trust companies, moneyed and other corporations, except railroad corporations, whether taxable under this chapter or otherwise, shall annually, on or before the fifteenth day of April, transmit to the clerk of each town in which shareholders in such corporation reside, a list of the names of such shareholders, with the number of shares standing in the name of each on the first day of April, and the amount paid in on each share; and shall, in like manner, transmit to the clerk of the town where the corporation has its principal place of business, a list of all the shareholders of such corporation with the number of shares standing in the name of each and the amount paid in on each share.

[See *Clapp v. Burlington*, 42 Vt. 579.]

§ 381. Stock held as collateral security and which has been transferred upon the books of the corporation, shall be returned as provided in the preceding section, by the clerk or secretary of the corporation to the clerks of towns where the owners of the stock reside, or, if they reside out of the State, to the clerk of the town where the corporation has its place of business.

§ 382. A person who does not make the returns required of him in the two preceding sections, shall forfeit five thousand dollars, to be recovered in an action on the case

by the town to which such return is required to be made.

[Cashier held liable under above section. *Newman v. Waite*, 43 Vt. 587; *Brattleboro v. Waite*, 44 id. 459; *Newman v. Waite*, 46 id. 689.]

§ 383. In assessing stockholders for stock in a manufacturing corporation, the value of its real estate taxed in this State or elsewhere and the value of all its personal estate and machinery taxed to such corporation in this State, under clause I of section three hundred seventy-four, and of personal estate taxed outside the State, shall be deducted from the whole value of its stock and the remaining value only shall be taxed; and in assessing for stock in all other corporations, the value of its real estate taxed in this State or elsewhere, shall be deducted from the whole value of its stock, and the remaining value only shall be taxed.

[The stock of the corporation cannot be assessed to stockholders when it does not exceed in value the value of the property which it represents, and which is assessed to the corporation. *Willard v. Pike*, 59 Vt. 263; s. c., 9 Atl. Rep. 307.

A manufacturing corporation, organized under the laws of, and located in, this State, is properly taxed for debts due it. *Waite v. Lumb Co.*, 65 Vt. 103; s. c., 25 Atl. Rep. 1089.]

§ 384. A corporation whose officers neglect or refuse to make the returns required by this chapter, shall forfeit a sum not exceeding five thousand dollars, to be recovered in an action on the case by the town to which such return is required to be made.

CHAPTER XXIX.

Grand List.

Sec. 406. Inventories, return of, in case of corporate or trust property.

§ 406. The officer of corporations on whom service of process may be made shall procure a blank, and such corporation shall fill out the same by its president or other principal officer. In case of property belonging to a trustee, estates of deceased persons and guardians, and of property or estates not in the care or possession of the owners, the blank shall be procured and filled by the person who has charge of such property or to whom the property is by law taxable.

[See *Waite v. Lumb Co.*, 65 Vt. 103.]

CHAPTER XXXI.

Taxation of Corporations.

Sec. 575. Of corporations; when payable.

576. If not paid, when payable.

577. To be paid until dissolution.

578. Complaint to chancellor; proceedings.

590. May examine books of persons.

591. Penalty for refusing to testify, etc.

592. May assess additional tax; notice.

591. Charters to conflict with this chapter repealed.

§ 575. Every corporation organized and existing under the laws of any State or govern-

Taxation of corporations; service of process — Stats., §§ 576-578, 590-592, 594, 1097, 1098.

ment other than the State of Vermont and doing business in this State, and every corporation organized under the laws of this State, and having capital stock or deposit of fifty thousand dollars, or less, shall be assessed an annual license tax of ten dollars; and for each fifty thousand dollars or fractional part thereof, of capital stock or deposit in excess of fifty thousand dollars, five dollars; but no tax shall exceed fifty dollars. Such tax shall be paid to the State treasurer, annually, in the month of February, and return shall be made at the time of payment to the commissioner and treasurer. Corporations organized for charitable or religious purposes shall be exempt.

§ 576. If a corporation neglects to pay the tax assessed in the preceding section, the commissioner shall notify the secretary or clerk of such corporation by mail of its neglect and may permit the payment of such tax within thirty days thereafter, by the payment of the additional sum of one dollar.

§ 577. A corporation shall be liable to pay such license tax until it surrenders its charter or dissolves its organization, and causes a certificate thereof to be filed in the office of the secretary of State.

§ 578. If such corporation neglects to pay such tax within the period last aforesaid, the commissioner shall make complaint to a chancellor, and a copy of said complaint shall be mailed to the secretary or clerk of such corporation at least twelve days before hearing. If upon hearing before the chancellor it appears that said taxes are not paid, he shall declare said corporation dissolved, and the same shall thereupon be dissolved, and a record of such dissolution shall be made in the office of the secretary of State.

§ 590. The commissioner of State taxes may summon before a magistrate and examine upon oath any officer, agent, or clerk of a corporation, or person required by this chapter to make returns or pay a tax and may examine any book of accounts kept by such corporation, or person, concerning all matters as to which information is required to carry out the provisions of this chapter.

§ 591. If an officer, agent, clerk, or person, refuses to appear and be sworn, or to testify with reference to such matters or to show to the commissioner such books of account, he shall be fined not more than five thousand dollars and not less than five hundred dollars.

§ 592. If the commissioner finds that, owing to the incorrectness of a return, or any other cause, a tax paid is too small, he shall assess an additional tax, sufficient to cover the deficit, and shall forthwith notify by mail the parties so assessed. If the additional assessment is not paid within thirty days after such notice, the corporation or person against whom it is assessed shall be liable to the same penalties as for neglect to pay annual or semi-annual taxes.

§ 594. So much of the charter of any corporation or company organized under the laws of this State as exempts such corporation from taxation, so far as it conflicts with this chapter, is hereby repealed.

TITLE XII. COURTS AND JUDICIAL PROCEEDINGS.

PART I.

Courts, and Proceedings in Civil Causes.

Ch. 56. Time and manner of service of process.
69. Trustee process.
80. Forfeiture of grants.
87. Costs.

CHAPTER LVI.

Time and Manner of Service of Process.

Sec. 1097. Of writ against corporation.
1098. On foreign company.

§ 1097. Writs against a corporation, except those in which the corporation is summoned as trustee, shall be served by leaving a copy with the clerk thereof, unless he is absent from the State; if there is no clerk, or if the clerk is absent from the State, the copy shall be left with one of the principal officers of the corporation, or, in the absence of all such officers, with one of the stockholders.

See § 3719, subd. 3, cross-references. Trustee process. §§ 1304 et seq. Scire facias. §§ 1570, 1571.

[A writ of audita querela must be served on a corporation like any other writ. *Clark v. Hydraulic Co.*, 12 Vt. 435.]

§ 1098. If a corporation, company, association or copartnership, not organized under the laws of this State, and doing an insurance, telegraph, telephone, express or shipping-car business herein, files with the secretary of State a stipulation agreeing that legal process against such corporation, company, association, or copartnership, may be served on such secretary, as required by law; service of process against it, made upon such secretary by delivering to him duplicate copies thereof, shall be sufficient. If such stipulation is not so filed with the secretary of State, process may be served in like manner and with the same effect upon a manager, agent, operator, or messenger of such corporation, company, association or copartnership.

Service of process on foreign corporation. §§ 4164-4170.

[See *Osborne v. Ins. Co.*, 51 Vt. 278.]

Trustee process; forfeiture of grants — Stats., §§ 1304, 1305, 1309, 1566-1572.

CHAPTER LXIX.

Trustee Process.

Sec. 1304. In actions founded on contract.

1305. Who may be summoned as trustee, in general.

1309. Corporation summoned as trustee.

§ 1304. Actions founded on a contract, express or implied, and actions of account, and book account, brought in the county court, or before a justice, may be commenced by trustee process.

§ 1305. A person or corporation may be summoned as a trustee of the defendant, and the goods, effects or credits of the defendant which are in the hands of such trustee at the time of the service of the writ upon him, or which come into his hands or possession before disclosure, shall thereby be attached and held to respond to final judgment in the suit, except as hereafter provided.

See §§ 1097, 1098.

[A foreign insurance company doing business in this State is subject to the trustee process. *Machine Co. v. Boutelle*, 56 Vt. 570.]

§ 1309. Corporations may appear by their cashier, treasurer, secretary, or such officer as they appoint, or as the court requires, and the answer, disclosure and examination on oath, of such officers, shall be received as the answer, disclosure and examination of the corporation.

CHAPTER LXXX.

Forfeiture of Grants.

Sec. 1566. The word "grant" construed.

1567. The word "grantee" construed.

1568. Grants, for what adjudged forfeited.

1569. Effect of judgment.

1570. Mode of process; where returnable.

1571. How issued, served and prosecuted.

1572. Notice by publication.

1573. When State's attorney shall prosecute.

1574. Grantees may defend severally; jury trial.

1575. Judgment on default.

1576. Equitable defense after verdict.

1577. Order of court if defense is sufficient.

1578. Otherwise, judgment of forfeiture.

1579. Exceptions.

1580. Copy of judgment transmitted to secretary of State.

1581. Writ of possession.

§ 1566. The word "grant," as used in this chapter, shall mean grants or charters of lands, situated in this State, made by the king of Great Britain, or by this state or any other government; acts of the general assembly, granting to individuals rights or privileges not common to all the citizens of the State; and acts of incorporation for any purpose.

[A legislative grant or a deed of lands of a corporation having perpetual succession, requires no words of perpetuity. *Grammar School v. Burt*, 11 Vt. 632; *Cong. Soc. v. Stark*, 34 id. 243.]

§ 1567. The word "grantee" shall mean the person to whom such land, right, or privileges were granted, and the representatives or assigns of such person, and the corporation thus created.

§ 1568. Grants may be adjudged forfeited for the non-performance of a condition annexed to, or contained in, such grant, whether expressed, or from the nature of the grant clearly implied.

[It is not every irregularity, or want of conformity with the directions of the charter, that annihilates a corporation; and a charter may even be forfeited, and still the corporate capacity remain. *Searsburg T. Co. v. Cutler*, 6 Vt. 323.]

The power of the court to vacate a charter upon information is to be exercised in discretion. It was refused where violation was not fraudulent, and no existing danger to the community seemed to require it. *State v. Bank*, 8 Vt. 489.

A surrender of franchises is to be presumed where there has been an entire non-user of corporate franchises, and neglect to choose corporate officers, for a sufficient length of time, but that time is not decided. *Iron Co. v. Gleason*, 24 Vt. 228; *Pentfield v. Skinner*, 11 id. 296.

The question of forfeiture cannot be put in issue collaterally, but only by direct proceedings instituted by the State to vacate the charter. *R. R. Co. v. Bailey*, 24 Vt. 465.]

§ 1569. When a grant is adjudged forfeited the grantee shall thereby be divested of the rights, benefits, and privileges derived therefrom, the grant shall be considered vacated, and the thing granted, revert to the State.

See §§ 3639-3703.

§ 1570. The mode of process shall be by a writ of scire facias, returnable to the county court of the county in which the land lies, if it is a grant of land; if it is an act of incorporation, in the county in which any part of the business of the corporation is done, or, by the terms of the act, should be done; if a turnpike corporation, in the county in which any portion of the road of such corporation is situated.

[The mode of proceeding to secure a judicial forfeiture of legislative grants of corporate franchises is by scire facias. This remedy superseded, by implication, the remedy by quo warranto. *Green v. Trust Co.*, 57 Vt. 310.]

A court of equity will not grant an injunction where it would be by indirection decreeing a forfeiture of a charter; or, it being discretionary, when it would be inequitable. *Wooden Co. v. Newton*, 57 Vt. 451.

While a franchise may be judged forfeited upon proof of wrong done and intentional non-user, it must only be in a court of law in a proceeding to test the right. *Id.*]

§ 1571. Such writ shall be issued and served like original writs, and shall be prosecuted by the State's attorney of the county in which it is returnable, in the name of the State.

Service of process. § 1097.

§ 1572. If the grantee is not an inhabitant of the State, notice of the scire facias shall

be given by publishing the substance of the writ in one or more newspapers designated by one of the judges of the court, three weeks successively, the last of which shall be at least twenty days before the sitting of such court, which shall be sufficient service of the writ; but if the grantee does not appear, the court may order further or other notice to be given.

§ 1573. The State's attorney shall, on the application of twenty or more freeholders of the county, commence such writ and prosecute the same against a corporation, if, in his opinion, the grant of such corporation is forfeited, and the public good requires that the same should be adjudged forfeited.

§ 1574. If several grantees claim under the same grant, each may appear for himself and make his several plea or answer denying the allegations in the writ, or pleading performance of the conditions of the grant; and issues of fact shall be tried by jury, and the jury may return a general or special verdict.

§ 1575. If the grantee does not appear after service of the writ, and sufficient facts are proved, the court may, upon hearing, adjudge the grant forfeited.

§ 1576. If the verdict is that the conditions of the grant have not been performed, or that the grant is forfeited, the grantee may show to the court his reasons in writing why the grant should not be forfeited, although a forfeiture is legally incurred, and the court shall judge the same according to equity and good conscience.

§ 1577. If the court considers the reason so shown sufficient, the same shall be briefly recited in the judgment rendered, which shall be that the grant in equity ought not to be, and is not, forfeited, and that the grantee pay the costs.

§ 1578. If no sufficient reasons are shown, the judgment shall be that the grant is forfeited, and the reasons, if any, and their insufficiency, shall be briefly recited in the judgment.

§ 1579. The judgment of the county court, upon the reasons so shown, may pass to the supreme court for adjudication, on exceptions, like questions of law arising upon the trial of issues of fact.

§ 1580. When final judgment has been rendered that a grant is forfeited, the clerk of the court shall, within sixty days from the rendition thereof, transmit to the secretary of State a certified copy of such judgment, to be recorded and kept in his office.

§ 1581. When judgment of forfeiture is thus rendered and transmitted, and the thing granted is capable of actual possession and occupancy, if the grantee does not surrender the same, possession thereof may be obtained, either by the State or by a second grantee, by a writ of possession, issued by the court rendering such judgment, on motion of the State's attorney or the second

grantee, and after reasonable notice of the motion has been given to the party in possession.

See § 3699.

CHAPTER LXXXVII.

Costs.

Sec. 1681. Consolidation of actions against directors.

1682. Judgment and execution in such case.

1683. Costs taxed in same.

§ 1681. In all cases brought to the same county court in favor of different creditors of a moneyed or other corporation against the directors thereof, or some of them jointly, based upon the provisions of the act of incorporation, or a statute, to recover for loss sustained by such creditors by reason of the incompetency, neglect or remissness of such directors, and where the same parties are defendants in each action, said cases may be consolidated by the court, upon request of the defendants or upon request of such of the several plaintiffs as shall join in a motion therefor, and proceed to final judgment as one case, and only one bill of costs shall be allowed to the successful party in court.

§ 1682. Such judgment, if for the plaintiffs, shall show the amount of damages awarded to each and separate executions shall issue thereon, with full costs in one case, and costs of writ, service and clerk fees in the others. If for defendants, the execution shall run against all the plaintiffs; but, as between themselves, they shall bear the costs in proportion to the amount of their respective claims.

§ 1683. When actions are brought by several plaintiffs against the same defendants, as provided in the second preceding section, and any of said cases are continued by the term without the fault of either party, or to await the result of similar pleadings in another cause, no costs shall be taxed in favor of either party, at such term, except clerk fees.

PART II.

Proceedings in Criminal Causes.

Ch. 96. Place of trial.

97. Limitation of criminal prosecutions.

CHAPTER XCVI.

Place of Trial and Proceedings in Court.

Sec. 1904. Judgment against corporation on default.

§ 1904. If a corporation, having been served with process, does not answer to a complaint, information or indictment, its default shall be recorded, and the charges in the complaint, information or indictment shall be taken to be true, and judgment rendered accordingly.

Courts of insolvency; chattel mortgages, etc.—Stats., §§ 1995, 2166–2169, 2212, 2251, 2254.

CHAPTER XCVII.

Limitation of Criminal Prosecutions.

Sec. 1995. Statutes of Limitation do not apply to suits against moneyed corporations to recover penalty.

§ 1995. The provisions of this chapter shall not apply to suits against moneyed corporations, or against the directors or stockholders thereof, to recover a penalty or forfeiture imposed, or to enforce a liability created by the act of incorporation or other law; but such suits shall be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or by which the liability was created.

TITLE XIII. INSOLVENCY AND THE LAW OF ASSIGNMENTS.

CHAPTER CII.

Courts of Insolvency.

Sec. 2166. Corporations subject to provisions of this chapter.

2167. Proceedings same as in case of person.

2168. Fraudulent and void transfers.

2169. No allowance or discharge to corporation or officer, etc.

§ 2166. The provisions of this chapter shall apply to corporations, except railroad and banking corporations, and upon the petition of an officer of such corporation authorized by vote at a meeting called for that purpose, or upon the petition of a creditor, made and presented as is in this chapter provided in case of an individual debtor, such corporation may be adjudicated insolvent.

§ 2167. The provisions of this chapter which apply to a debtor, or set forth his duties in regard to furnishing schedules, executing papers, submitting to examination, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, and penalties shall apply to each officer of such corporation in relation to the same matters concerning the corporation, and the money and property thereof.

§ 2168. Payments, conveyances and assignments, declared fraudulent and void by this chapter when made by a debtor, shall in like manner, to the like extent and with like remedies, be fraudulent and void when made by a corporation.

§ 2169. No allowance or discharge shall be granted to a corporation or to a person, officer or member thereof, as such; and when a corporation is declared insolvent under this chapter, its property and assets shall be distributed to its creditors in the manner provided in respect to natural persons.

TITLE XIV. ESTATES AND THEIR INCIDENTS.

Ch. 106. Conveyance of real estate.
108. Mortgages of personal property.

CHAPTER CVI.

Conveyance of Real Estate.

Sec. 2212. Corporation may convey by agent.

§ 2212. A public or a private corporation, authorized to hold real estate, may convey the same by an agent appointed by vote for that purpose.

CHAPTER CVIII.

Mortgages of Personal Property.

Sec. 2251. Personality subject to.
2254. When a corporation a party; who to make affidavit.

§ 2251. All personal property shall be subject to mortgage agreeably to the provisions of this chapter.

§ 2254. When a corporation is a party to such mortgage, the affidavit required may be made and subscribed by a director, trustee, cashier or treasurer thereof, or by a person authorized on the part of such corporation to make or receive such mortgage; * * *

TITLE XXV. PRIVATE CORPORATIONS.

Ch. 164. Private corporations.
165. Formation of corporations by voluntary association.

CHAPTER CLXIV.

Private Corporations.

Sec. 3673. Term "private corporation" defined.
3674. Moneyed corporation defined.
3675. "Corporation" includes what.
3676. Clerk and treasurer defined.
3677. President and directors must be stockholders.
3678. Certificates of capital paid in.
3679. Attachment by director, when postponed.

Clerks.

3680. Penalty for not having clerk.
3681. Custody, inspection and copies of by-laws and records.
3682. Penalty for refusing to show by-laws and records.
3683. Clerk to keep record.

Treasurer of Moneyed Corporations.

3684. Election; duties.

Miscellaneous.

3685. Officers, no salary unless voted; embezzlement.
3686. Legislative control.

Private corporations; clerk of corporation — Stats., §§ 3673-3682.

Capital Stock; Sale to Pay Assessments of Debts.

- 3687. Capital stock is personalty; how transferred.
- 3688. Bank or trust company not to refuse to transfer, when.
- 3689. Transfer of certificate of stock as collateral, voted when.
- 3690. Notice of opening books for subscriptions.
- 3691. Sale of shares to pay tax or assessment.
- 3692. Place and notice of sale.
- 3693. Attachment and levy.
- 3694. On corporate liability.
- 3695. Stockholder's remedy over.

Stock Certificates Lost or Destroyed.

- 3696. Owner to advertise loss, how.
- 3697. New certificate to be issued, when; no liability on original.
- 3698. New certificate refused; relief in chancery.

Closing up Affairs of Corporations.

- 3699. Corporations continued for, how long.
- 3700. Receivers; appointment, powers and duties.
- 3701. Receivership continued; notice; bond.
- 3702. Court may make necessary orders.
- 3703. Distribution of funds.

§ 3673. The term "private corporation," as used in this chapter, shall mean a corporation created for the purpose of making a turnpike road, railroad, or canal, for carrying on any branch of manufacture, for mining, for improving navigation of a stream or other waters, for building wharves or storehouses, for building or using steamboats or other vessels, for the purposes of banking or insurance, and other corporations which, from their object, suppose a division of profits among the stockholders.

Word "person" includes corporation. §§ 21, 355. "Corporation" includes what. § 3675. "Domestic" and "foreign" corporations defined. § 4164.

§ 3674. Corporations created by the general assembly whose charters contemplate the receiving or holding money on deposit, or the letting, loaning, or managing money deposited, other than banks of discount, shall be deemed moneyed corporations within the meaning of this chapter.

§ 3675. The term "corporation," as used in this chapter, shall include associations or joint-stock companies, having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 3676. The term "clerk of a corporation," as used in this title, shall mean the recording officer, whether he is styled clerk, secretary, cashier, or however designated; and the term "treasurer", as used in this title, shall mean the officer who has the care and custody of the funds of the corporation, by whatever name he is designated.

See §§ 3680-3682, 3712-3716.

§ 3677. No person shall be eligible to or hold the office of president or director in a private corporation unless he is in good faith a stockholder therein.

Directors and president, how chosen. § 3717.

§ 3678. Before a private corporation commences business, the president and directors thereof shall make a certificate, under oath, stating the amount of capital actually paid in; and they shall make a similar certificate upon an increase of the capital stock; which certificates shall be filed in the office of the secretary of State.

Capital stock. §§ 3687 et seq.; 3728 et seq.

§ 3679. When the property of a private corporation is attached on a writ in favor of a director thereof, and the same is afterwards attached at the suit of a creditor who is not a director and before the return day in the first suit, the attachment made by the director shall be postponed, and such subsequent attachment shall hold the property against it.

§ 3680. If a private corporation neglects for six months to appoint and have a clerk residing in this State, it shall forfeit fifty dollars to the person injured, to be recovered in an action on the case.

See §§ 3712-3716. Clerk defined. § 3676.

§ 3681. The clerk of such corporation shall have the custody of its by-laws and records, and shall, at reasonable times, exhibit the same to an owner of the stock of such corporation, his agent or attorney, on demand, and give certified copies of such by-laws and records, when required, on a reasonable compensation therefor being tendered him.

See §§ 3712-3716, 3733.

[Shareholders are the owners of corporate property, and have the right, at common law, to examine and inspect all corporate books and records, at all reasonable and proper times, and to be thereby informed of the condition of the corporation and its property, and this without making known to the recording officer his purpose or reasons therefor. *Lewis v. Brainerd*, 53 Vt. 510. The demand for inspection must be made at clerk's office. *Id.*]

The stock ledger and transfer-books are records within the meaning of this act. *Id.*]

§ 3682. If a clerk wilfully neglects or refuses to exhibit the by-laws and records in his possession, he shall forfeit to the person injured ten dollars for every twenty-four hours he so neglects or refuses, to be recovered in an action on the case.

See §§ 3713-3716.

[Above statute should be so construed and enforced as effectually to carry out the purposes of the legislature, and remedy the evil sought to be prevented. *Lewis v. Brainerd*, 53 Vt. 510. Clerk cannot be relieved from this duty by any by-laws of the corporation or resolution of directors. *Id.* See, also, *Same v. Same*, 53 Vt. 519.]

Treasurer; capital stock — Stats., §§ 3683-3690.

§ 3683. A private corporation shall, by its clerk, keep a record of its corporate action, in which the shares of the capital stock of the corporation shall be designated by numbers, and also a record of the name of each owner of stock, and the number and description of the shares of such owner.

[Where a corporation is required to keep records, its proceedings cannot be proved by parol, although no records are actually kept. *Stevens v. Eden Soc.*, 12 Vt. 688.]

§ 3684. All moneyed corporations, except as otherwise provided by law, shall at the first election of officers elect a treasurer of the corporation, and shall keep up the office of treasurer therein. The treasurer shall receive money deposited or put in trust with such corporation.

Treasurer defined. § 3676.

[Treasurer refusing to pay dividends to stockholder on demand held personally liable therefor in assumption for money had and received. *Williams v. Fullerton*, 20 Vt. 346.

Directors of a business corporation having by the by-laws authority to appoint a treasurer may do so, without any formal meeting; and in absence of any prohibition in charter or by-laws, may agree with him as to his compensation. *Walte v. Mining Co.*, 37 Vt. 608; s. c., 36 id. 18.

A corporation may recover in general assumption from its treasurer money which he has received from sale of its stock, fraudulently overissued by him, where such spurious stock has become so intermingled with the genuine as to be indistinguishable, and corporation has been compelled to treat it as genuine. *R. R. Co. v. Haven*, 62 Vt. 39; s. c., 19 Atl. Rep. 769.

A treasurer obtaining a commission on a sale to the corporation by issuing stock of the corporation must account for the whole amount so received. *Rutland Electric Light Co. v. Bates*, 35 Atl. Rep. 480.

A treasurer held liable for moneys paid under a contract void as to the corporation. *Id.*

§ 3685. No officer of a private corporation shall receive a salary unless the same is voted and the amount thereof fixed by the board of directors, and any officer who appropriates to his own use any of the funds of such corporation, not voted by its directors, shall be deemed guilty of embezzlement.

See § 3719, subd. 2.

[As a general rule, directors are not entitled to compensation for their services as such, unless rendered under some express contract, or vote of the corporation to that effect. *Hall v. R. R. Co.*, 28 Vt. 491.]

§ 3686. Act creating, continuing, altering or renewing a corporation or body politic, hereafter passed by the general assembly, may be altered, amended, or repealed as public good requires.

See § 3741.

[A charter taken subject to future legislation may be modified as well by general law as by special amendment. *St. Albans v. Car Co.*, 57 Vt. 68.]

§ 3687. The capital stock of a private corporation shall be personal estate, and may be transferred as provided by its by-laws.

Corporate stock is personalty for taxation. §§ 378 et seq. And is subject to attachment. §§ 3693, 3694. See §§ 3728-3731. Transfer. § 3689.

[Stockholder cannot avoid personal liability by a transfer of his stock made for that purpose. *Dauchy v. Brown*, 21 Vt. 197.

A sale or gift of stock conveys all undivided earnings and right to future dividends, whether earned before or not. *King v. Follett*, 3 Vt. 385.

Transfer of certificate of stock, with an assignment indorsed and a power to transferee to effect a transfer of the stock on the books of the corporation, is a valid transfer of the stock, as between the parties, and vests the title in the transferee. *Noyes v. Spaulding*, 27 Vt. 429.]

§ 3688. No bank, savings bank and trust company, or trust company shall refuse to transfer on its books its capital stock on the ground that the present owner of record is a debtor of such bank or other institution, unless it has given notice of its right so to do by printing a statement plainly on the face of the certificate. This section shall not apply to cases where the indebtedness accrued prior to November 21, 1894.

[Notice to president of a bank, or of a cashier, by a stockholder, that stock standing in his name he holds as trustee of another, is notice to the bank. *Porter v. Bank*, 19 Vt. 419.]

§ 3689. The transfer, by assignment and delivery, of a certificate of stock in a corporation, in this State, as collateral security, shall be a valid transfer of the shares of stock represented by such certificate, when made to secure a valid debt or obligation, as against the party so transferring the same, his heirs, executors, administrators and assigns, and when notice of the assignment and delivery is given to the clerk, cashier or treasurer of such corporation, and a memorandum thereof made upon the stock ledger of the corporation, such assignment shall be valid against the subsequent attaching creditors of the assignors, provided the same is made in good faith; but nothing herein shall change the evidence of ownership of such stock so far as the corporation is concerned.

Certificates lost. §§ 3696-3703. See § 3678.

[Stockholder cannot avoid personal liability by a transfer of his stock made for that purpose. *Dauchy v. Brown*, 21 Vt. 197.]

§ 3690. When, by an act of incorporation, commissioners are appointed to open books for subscription to the capital stock of a private corporation, they shall, before opening the same, give at least thirty days' notice of the time and place thereof, by publication in a newspaper.

§ 3691. When the owner of stock in a private corporation does not pay a tax or assessment, laid or assessed by the corporation, agreeably to the by-laws thereof, the treasurer may sell, at public auction, the shares of the delinquent, under such regulations as the corporation in its by-laws directs; and the purchaser, on producing a certificate of sale from the treasurer to the clerk of the corporation, with the number of shares so sold, and causing the same to be recorded by the clerk, shall be the owner thereof; and the excess, if any, after paying the tax or assessment and charges, shall be paid by the treasurer to the delinquent, on demand.

See § 3732, and note. Corporation has lien upon stock. § 3727.

[A subscriber to capital stock impliedly promises the corporation to pay any legal assessment upon shares subscribed for, and action may be maintained without any express promise upon part of subscriber. The statutory remedy by forfeiture of the shares is cumulative. *Elect. Light Co. v. Tandy*, 66 Vt. 248; s. c., 29 Atl. Rep. 248.]

Where persons associate themselves as a corporation, and all subsequent steps necessary to perfect organization are taken, the original subscribers become members of the corporation and liable to assessments upon their subscriptions. *Id.*]

§ 3692. If the stock owned by an inhabitant of this State, in a private corporation organized under the laws of this State, is sold for the non-payment of a tax or assessment by the corporation on such stock, the sale shall be made at the office of the clerk of the corporation in this State, and upon notice of the sale published three weeks successively in a weekly or daily newspaper.

§ 3693. Shares of the capital stock in a private corporation may be attached by leaving a copy of the attachment with the clerk of the corporation, and such shares may be taken and sold on execution like other personal property. The purchaser thereof shall cause an attested copy of the execution and officer's return thereon to be left with the clerk of the corporation, within twelve days after the sale, and the title of the stock, so sold, shall vest in the purchaser.

See § 3687.

[Attachment of corporate stock. See *Cheever v. Meyer*, 52 Vt. 66.]

§ 3694. Capital stock of a private corporation shall be liable to attachment and sale on execution against the corporation. The shares of one or more stockholders thereof may be taken on attachment or taken and sold on execution in a proceeding against the corporation, in the same manner as shares of stock owned by a person may be attached and sold on execution against him.

[See *Chandler v. Henry*, 30 Vt. 330.]

§ 3695. A person whose stock is thus attached and sold may recover the damages sustained thereby in an action on the case against the corporation.

§ 3696. When the certificate of the ownership of shares of the capital stock of a corporation is lost or destroyed, and the owner desires to obtain a new certificate, he shall advertise the loss or destruction, with a description of the certificate, in two newspapers, one published in the vicinity of the residence of the owner and the other in the vicinity of the place of business of the corporation, at least five weeks successively, and a notice of the loss with a description of the certificate shall be posted in the office of the corporation for the same length of time.

§ 3697. If no other person claims the shares within three months after such publication and notice, the corporation shall issue to the owner a new certificate thereof which shall state that it is issued in lieu of the one lost or destroyed; and the corporation shall not be liable thereafter on account of the original certificate.

§ 3698. If a person claims such shares by virtue of such original certificate before a new one is issued, or if the corporation refuses to issue a new certificate, a person interested may petition the court of chancery for relief, and such court may, upon notice and hearing, in a summary manner, make such order in the premises as the case requires.

§ 3699. Corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall continue bodies corporate to enable them gradually to close their concerns, to dispose of and convey their property, to divide their capital stock, and to prosecute and defend suits, for three years and until such suits and the subject matter thereof are fully disposed of, but not for the purpose of continuing the business for which they were established.

Annulling charters. §§ 1566-1581. Voluntary dissolution. §§ 3735 et seq.

§ 3700. When the charter of a corporation expires or is annulled, the court of chancery upon the application of a creditor, stockholder or member thereof, within the time prescribed in the preceding section, may appoint a receiver for such corporation, who shall take charge of the estate and effects thereof, collect the debts and property due and belonging to the corporation, prosecute and defend, in the name of the corporation or otherwise, such suits as are necessary and proper for the purposes aforesaid, and do other acts which might be done by the corporation, if in existence, necessary for the settlement of its unfinished business.

Voluntary liquidation. §§ 3735-3742.

Formation of corporations; articles—Stats., §§ 3701-3705.

§ 3701. The powers of the receiver may be continued as long as the court judges necessary for the purposes contemplated in the second preceding section; but such court of chancery shall, upon application, order ample security to protect the rights of parties interested, before such extension is made or a receiver appointed. Notice of the application shall be given by publication in a newspaper at least two weeks before the time set for hearing the same.

§ 3702. The court of chancery may make such orders, injunctions and decrees necessary to carry into effect the two preceding sections as equity requires.

§ 3703. Such receiver shall pay the debts due from the corporation, if the funds in his hands are sufficient; if not, he shall distribute the same ratably among the creditors who prove their debts as directed by an order or decree of the court; and if there is a balance after the payment of debts, the receiver shall distribute the same to those who are entitled thereto as stockholders or members of the corporation, or their legal representatives.

See § 3736.

CHAPTER CLXV.

Formation of Corporations by Voluntary Association.

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§ 3704. Five or more persons of lawful age may, by articles of association, form a corporation for carrying on any object or business not repugnant to public policy or the laws of this State, excepting telegraph, telephone, express, banking and insurance business, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan of money or to deal in real estate, but if, in the opinion of the secretary of State, the business of a proposed corporation may be repugnant to public policy or the laws of this State, he shall, before making the record hereinafter provided, refer the same to a judge of the supreme court, who shall have full power to determine, with or without hearing, whether said proposed corporation may or may not be organized under the provisions of this chapter.

"Corporation" defined. §§ 3673-3675.

[A joint-stock company does not become a corporation merely by voting to accept a charter granted to its officers by the legislature. *Wills v. Chapman*, 35 Atl. Rep. 459.]

§ 3705. The articles of association shall set forth the name of the corporation, the object or objects for which it is established, the place in which its business is to be carried on, the amount of its capital stock, if any, and be signed by the persons who associate to form it, with the designation of the post-office address of each. Any corporate name may be assumed which is not in use by another corporation or company, and a corporation so organized may adopt a corporate seal.

Change of name. § 3731. Must sue by corporate name. § 3719, subd. 3, note. Capital stock. §§ 3728-3732.

Articles of association; first meeting; clerk — Stats., §§ 3706-3713.

§ 3706. Such articles of association shall be transmitted to the secretary of State, who shall, if the same are made and executed in compliance with the preceding section, record them in a book kept for that purpose and return to the corporators a certified copy thereof, which copy shall be recorded in the office of the clerk of the town in which the principal place of business of the corporation is to be located, in a book kept for that purpose. When said original articles and said certified copy are so recorded, and the franchise or license tax required by law, if any, has been paid to the State treasurer, the signers thereof shall be a corporation, with the rights and powers and subject to the duties and liabilities of corporations.

"Corporation" defined. §§ 3673-3675.

§ 3707. The articles of association provided in the preceding sections shall be in substance as follows:

We, the subscribers, hereby associate ourselves together as a corporation, under the laws of the State of Vermont, to be known by the name for the purpose of at in the county of in the State of with a capital stock of divided into shares of dollars each, [if it be a stock company.] (or upon the following conditions.) [if not a stock company here insert conditions under which the subscribers agree to associate together for the purposes named]. Dated at in the county of this day of....., A. D.

§ 3708. Any three of the signers of the articles of association may call the first meeting of the members or stockholders by delivering to each, or leaving at his abode, or mailing prepaid to his address, a notice, at least seven days prior thereto, of the time and place of such meeting; or it may be held without previous notice, if all the members or stockholders voluntarily assemble for the purpose, or agree thereto in writing; in which case a record shall be made of such voluntary meeting or agreement.

§ 3709. At the first meeting, or any adjournment thereof, the members or stockholders shall effect an organization by the choice, by ballot, of a temporary clerk, the adoption of by-laws, and the election of officers in accordance therewith, and with the laws of the state. The temporary clerk shall hold office until a permanent clerk is regularly chosen and qualified.

Election of clerk. § 3712.

[Pledgee of stock is not, for purpose of meetings of stockholders, to be regarded as owner of the stock. *McDaniels v. Mfg. Co.*, 22 Vt. 274.]

A corporation, and every member thereof, is bound by a vote of the majority present at a meeting properly called, and not otherwise. If no

provision is made for such call, every member must have personal notice. *Stevens v. Eden Soc.*, 12 Vt. 688.

All corporations may transact any business at an adjourned meeting which they could have done at the original meeting. *Warner v. Mower*, 11 Vt. 385; *Schoff v. Bloomfield*, 8 id. 472.]

§ 3710. Such corporation may adopt necessary by-laws and therein provide for the election, removal, and retiring of members; fix the times and places of holding meetings, and the manner of calling and conducting the same; regulate the number of officers, the manner of choosing them, their tenure of office, and their powers and duties, and may alter and amend the same.

By-laws to be in custody of clerk. § 3681.

§ 3711. In the event of a failure to hold an annual meeting, the owners of one-twentieth of the stock or property, or if the same is not divided into shares or stock, one-twentieth of the members may apply in writing to a justice to call a meeting, stating the occasion and purpose thereof. The justice shall thereupon fix a time and place of meeting and issue his warrant to one of the applicants, requiring him to warn a meeting, to be held at such time and place, and for the purpose stated in the application and warrant; at such meeting, business pursuant to such application may be transacted.

[Every member of a corporation is entitled to notice of a special meeting, unless the by-laws excuse it. But where the time, place and object of the meeting are fixed by corporate statutes, or where it is stated and general, as the annual meeting, no notice is required. *Warner v. Mower*, 11 Vt. 385.]

At annual meeting, all business pertaining to a corporation may, unless restricted by the by-laws, be transacted without previous notice thereof. *Id.*

Presumption is in favor of the regularity of proceedings of a corporate meeting. *McDaniels v. Mfg. Co.*, 22 Vt. 274.

Where a corporation is required to keep records, its proceedings cannot be proved by parol, although no records are actually kept. *Stevens v. Eden Soc.*, 12 Vt. 688.]

§ 3712. A corporation shall have a clerk, who shall be elected annually by the stockholders, or in such other manner as the by-laws prescribe, and shall be and continue an inhabitant of this State, and keep his office herein; he shall hold office for one year and until his successor is elected and qualified. A vacancy in the office shall be filled as provided in the by-laws, or if no provision is made, it shall be filled by the directors or officers charged with the management of the affairs of the corporation, until the next election.

Temporary clerk. § 3709. Penalty for not having clerk. § 3680.

§ 3713. The clerk shall record all votes and proceedings of the stockholders or members of the corporation, and of the directors or

Officers and directors; powers — Stats., §§ 3714-3719.

other officers charged with the management of its affairs; he shall keep a record of all instruments and papers required to be recorded in his office and perform all other duties incumbent on him by law, usage, or the by-laws.

See §§ 3681-3683, 3733.

§ 3714. All records, accounts and papers of the corporation shall be open to the inspection of every member and stockholder.

Penalty for refusing to show. § 3682. For neglect to furnish copies. § 3716.

§ 3715. A clerk, treasurer, assistant treasurer, or other officer or agent of a corporation shall, on payment or tender of his fees, give a certified copy of any record, account, or paper, in his custody which the party demanding the same is entitled to inspect.

§ 3716. If a clerk, treasurer, assistant treasurer or other officer, or any agent of the corporation, after demand and payment or tender of the fees therefor, neglects or refuses for three days to furnish such copy, he shall forfeit for each offense not exceeding one thousand dollars, to the number, or stockholder who demanded the same.

§ 3717. The business of such corporation shall be managed by not less than three directors, who shall after the meeting for organization and before the transaction of any other business be stockholders, and at least two of the directors shall reside in the State; they shall be elected annually by the stockholders, at such time and place as is provided in the by-laws, and shall hold their office one year and until their successors are elected; said directors shall elect one of their number president of the corporation, and may fill a vacancy in the board occurring during the year. If the corporation is not a stock company, it may be managed by not less than three trustees, to be chosen in such manner and to hold office for such time as may be prescribed in the by-laws.

Directors and president must be stockholders. § 3677. Liability of directors. §§ 3722, 3723, 3724. Signing false certificate of stock, penalty. §§ 4970, 4971.

[In the absence of restriction in charter or by-laws, directors have all the authority of the corporation itself in the conduct of its ordinary business. *Bank v. Pottery Co.*, 34 Vt. 144; *Page v. Smith*, 48 Id. 266.

As to ordinary powers of directors and of corporate agents, see *Bank v. Pottery Co.*, 34 Vt. 144; *Perkins v. Bradley*, 24 Id. 66.

Action of directors, though acting separately, if in the usual sphere of directors, binds the corporation. *Foot v. R. R. Co.*, 32 Vt. 633.

Duties and liabilities of directors. See *Lewis v. St. Albans I. & S. Works*, 50 Vt. 477.

In absence of some delegation of authority, express or implied, president can no more bind a corporation than any other individual trustee. *Mill Co. v. Lyndon Inst.*, 63 Vt. 581; s. c., 22 Atl. Rep. 575.

A corporation is chargeable with the knowledge of its directors, and if one director, having authority thereto, makes a contract, the corporation is not relieved from the effect of it by what some other director, without the knowledge of the one making the contract, may have previously done. *Granite Co. v. Mulliken*, 65 Vt. 465; s. c., 39 Atl. Rep. 28.

A corporation may, upon discovering the fact, compel a director to account for profits made upon a contract with a corporation. *Rutland Electric Light Co. v. Bates*, 68 Vt. 539; s. c., 35 Atl. Rep. 480.

The fact that an officer of a corporation procuring notes to be discounted by a bank, and the proceeds applied to the corporation's debt to a partnership, was a member of that partnership, did not affect the bank's right to recover the amount of the discounts on the corporation becoming insolvent. *Bank v. Poulney Slate Works' Assignee*, 33 Atl. Rep. 895.]

§ 3718. A majority of the directors or trustees convened according to the by-laws shall be a quorum, and a majority of the stock represented, or of the members of a corporation having no capital stock, present at a meeting, may transact business. Each share of stock shall entitle the holder to one vote, which may be cast under a written proxy duly filed with the clerk.

[Where only a minority of directors assemble at a called meeting, they cannot lawfully adjourn the meeting to a distant place. *Page v. Smith*, 48 Vt. 266.]

§ 3719. Such corporation may (1) admit associates and members, and for just cause remove them;

2. And may elect necessary officers, define their duties and fix their compensation;

No salary unless voted. § 3685. Clerk and treasurer defined. § 3676. Election of treasurer. § 3684. Of clerk. § 3712. Of directors and president. § 3717. Powers of agent in making contracts. See note to § 3720.

3. May sue and be sued, appear, prosecute and defend in the corporate name to final judgment and execution;

Service of process on domestic corporation. § 1097. On foreign corporation. §§ 1098, 4164-4170. Trustee process. §§ 1304 et seq. *Seire facias*, § 1571. Proceedings to forfeit charter. §§ 1566 et seq. Statute of Limitations. § 1995. Proceedings in insolvency. §§ 2166 et seq. Execution against corporate stock. § 3694. Action by owner against corporation. § 3695. Receiver may sue and be sued. § 3701.

[In a suit by a corporation against a stranger, it is sufficient proof of corporate existence, to show a legal origin by their charter, and the existence de facto by their acts. Production of records is not necessary. *Turnpike Co. v. Cutler*, 6 Vt. 315.

In a suit by a corporation standing upon general issue, the plaintiff is not required to make proof of its corporate existence. Such defense must be made by plea in abatement, or in bar. *Type Foundry v. Spooner*, 5 Vt. 93; *Lord v. Biegelow*, 8 Id. 445; *Ins. Co. v. Wires*, 28 Id. 93.

An execution debtor is estopped from denying, on *habeas corpus*, the legal existence and corpo-

rate capacity of the plaintiff corporation in whose name the judgment against him was recovered. *Ex parte Sargeant*, 17 Vt. 425.

Subscriber to stock cannot, in suit upon such subscription, deny legal organization of the corporation. *R. R. Co. v. Langdon*, 46 Vt. 284.

Liability of a corporation for torts of its agents. See *Jones v. R. R. Co.*, 27 Vt. 399; *Lyman v. Bridge Co.*, 2 Aik. 255; *Sabine v. R. R. Co.*, 25 Vt. 363.

Generally speaking, corporate rights and interests must be asserted and defended, both at law and in equity, in the corporate name, and not in name of stockholder, debtors, etc. *Bradley v. Richardson*, 23 Vt. 720.

A corporation may maintain action of book account. *Ins. Co. v. Cummings*, 11 Vt. 503. In such an action, the question of its corporate existence cannot be raised by the defendant before the auditor, but only by plea before judgment to account. *Hunneman v. Fire Dist.*, 37 Vt. 40.

Assumpsit lies against a corporation upon an implied, as well as on an express, promise. *Poultney v. Wells*, 1 Aik. 180; *Gassett v. Andover*, 21 Vt. 342.

Promoter of a corporation was allowed to recover for his necessary services for procuring subscriptions to stock. *Hall v. R. R. Co.*, 28 Vt. 401. But charges against the company for services in procuring their act of incorporation disallowed. *Id.*

Corporations are liable for their negligent torts, and for negligence of their officers and servants acting in the course of their official duty or employment, in same manner and to same extent as individuals. *Selinas v. Agric. Soc.*, 60 Vt. 249; *s. c.*, 15 Atl. Rep. 117.

Trespass, or other proper action, may be maintained against corporations for torts authorized or commanded by them. *Lyman v. Bridge Co.*, 2 Aik. 255; *Sabine v. R. R. Co.*, 25 Vt. 363.

When and by whom question of ultra vires, in a contract by a corporation, may be raised. *Noyes v. R. R. Co.*, 27 Vt. 110; *R. R. Co. v. Proctor*, 29 Id. 93; *Sturges v. Knapp*, 31 Id. 62; *R. R. Co. v. R. R. Co.*, 34 Id. 2.

The question of forfeiture of franchises cannot be raised collaterally, but only in a direct proceeding instituted by the State to vacate the charter. *R. R. Co. v. Bailey*, 24 Vt. 465.

A foreign corporation is subject to suit in courts of this State, where jurisdiction has been acquired. *Day v. Bank*, 13 Vt. 97.

In an action upon a contract, question of corporate existence of a company, not a party, came up collaterally. Held, that it was only necessary to prove that the company held itself out to the world and assumed to act as a corporation regularly organized; and that for this purpose the books and records showing corporate organization, and that it acted and did business under the same, was competent evidence on that point. *Reynolds v. Myers*, 51 Vt. 444.

An indictment lies against a corporation for erection and maintenance of a common nuisance by its officer and agents. *State v. R. R. Co.*, 27 Vt. 103. Sufficiency of indictment against a corporation. *Id.*

4. Appoint agents and attorneys for that purpose;

5. And shall have perpetual succession, unless incorporated or formed for a limited term, or dissolved as provided by law.

Charter annulled. §§ 1566 et seq. Voluntary dissolution. §§ 3735 et seq. Continue for how long. § 3699. All franchises liable to repeal or amendment. § 3686.

§ 3720. It may make contracts, may hold by purchase, gift, grant, devise or bequest real and personal property, necessary for

the purpose of the corporation, or taken in payment of, or as security for debts due; and may manage, mortgage, convey and dispose of the same.

[For the purpose of contracting and being contracted with in matters relating to its organization, a corporation may be regarded as in esse from date of its charter and before any subscriptions to its stock. *Hall v. R. R. Co.*, 28 Vt. 401; *R. R. Co. v. Claves*, 21 Id. 30.

A corporation may have such an existence by force of legislative act creating it, as to be enabled to take a grant of land, vesting in it the title, before it has such an organization as to enable it to enter upon transaction of its general business. *Min. Co. v. Bank*, 44 Vt. 489.

It is not important that authority to agents of a corporation to contract in its behalf, either under seal or otherwise, should be conferred at an assembly of the directors, unless that is the usual mode of their doing such acts. *Bank v. R. R. Co.*, 30 Vt. 159.

The indorsement of a promissory note made payable to a corporation and signed S. B., "agent." Held, that this was sufficient, in form, as an indorsement of the corporation. *Lyman v. Sherwood*, 20 Vt. 42.

As to ordinary powers of making contracts and of corporate agents, see *Bank v. Pottery Co.*, 34 Vt. 144; *Perkins v. Bradley*, 24 Id. 66.

Agents of a corporation, performing the daily routine of its business, but under the supervision and control of the board of directors, has no authority, as agent, to create a lien upon the entire property of the corporation to secure advances to the corporation. *Whitwell v. Warner*, 20 Vt. 425.

Corporations are bound by acts of servants and agents in their employment, within their ordinary line of duty, without any formal vote conferring such authority. *Foot v. Ry. Co.*, 32 Vt. 633.

A conveyance of its lands by a corporation can only be by a deed executed in manner prescribed by statute. *Wheelock v. Moulton*, 15 Vt. 519; *Isham v. Iron Co.*, 19 Id. 230; *Pope v. Henry*, 24 Id. 500; *Miller v. R. R. Co.*, 36 Id. 452.

The corporators or shareholders cannot, as such, convey real estate of the corporation, though they all joined in the deed. *Wheelock v. Moulton*, 15 Vt. 519; *Isham v. Iron Co.*, 19 Id. 230.

Under a statute authorizing a corporation to convey lands "by an agent appointed by vote for that purpose," it is not essential to the validity of such deed that the vote should be recited in it. *McDaniels v. Mfg. Co.*, 22 Vt. 274.

A contract to convey land by a corporation is not required to be executed or ratified with the same formality as the actual conveyances. *Conant v. Canal Co.*, 29 Vt. 263; *Isham v. Iron Co.*, 19 Id. 230; *Miller v. R. R. Co.*, 36 Id. 452.

Corporation has capacity to take a grant of lands in fee, except for purpose wholly foreign to object of its creation, or unless restricted by its charter or by statute. *Page v. Heineberg*, 40 Vt. 85.

Power of a foreign corporation to hold land. *Bridge Co. v. Royce*, 42 Vt. 730.

The sealing a deed with a corporate seal does not import nor include a signing by the corporation. *Isham v. Iron Co.*, 19 Vt. 230.

A legislative grant or a deed of lands to a corporation having perpetual succession requires no words of perpetuity. *Grammar School v. Burt*, 11 Vt. 632; *Cong. Soc. v. Stark*, 34 Id. 243.

Manufacturing corporation may connect a retail store with its ordinary business, either as a convenience or a necessity. *Dauchy v. Brown*, 24 Vt. 197.

When and by whom question of ultra vires in a contract by a corporation may be raised. *Noyes v. R. R. Co.*, 27 Vt. 110; *R. R. Co. v. Proctor*, 29 Id. 93; *Sturges v. Knapp*, 31 Id. 62; *R. R. Co. v. R. R. Co.*, 34 Id. 2.

A corporation is chargeable with the knowledge of its directors, and if one director, having authority thereto, makes a contract, the corporation is not relieved from the effect of it by what some

Statement of capital; dividends; liability of stockholders, etc.—Stats., §§ 3721–3729.

other director, without the knowledge of the one making the contract, may have previously done. *Granite Co. v. Mulliken*, 66 Vt. 465; s. c., 30 Atl. Rep. 28.]

§ 3721. It may take mortgages or pledges, or make attachments of any property to secure the payment of debts due, and may perfect title thereto by proper legal proceedings; but shall sell or dispose of property which it is not authorized to hold, within five years after acquiring the same.

§ 3722. Before a corporation commences business, the president or clerk shall make a certificate under oath, stating the amount of capital actually paid in, which shall be filed in the office of the secretary of State and a certified copy thereof filed with the clerk of the town in which the principal place of business of said corporation is to be located; and if the corporation contracts debts before a copy of its articles of association and such certificate are filed with such town clerk as provided in this chapter, the president and director shall be personally liable for such debts.

See §§ 3687 et seq.; 3728 et seq.

[When articles of association are signed upon the understanding that they shall not take effect until the happening of certain contingencies, they do not become effective and no corporation exists until that contingency happens. *Corey v. Morrill*, 61 Vt. 398; s. c., 17 Atl. Rep. 840.

Under above section the directors are only liable for debts contracted during the time of not complying with the statute. *Cady v. Sanford*, 53 Vt. 633.]

§ 3723. If the directors declare and pay a dividend to the stockholders, from the property and assets of a corporation when the same is insolvent, or when by the payment of such dividend it becomes insolvent, knowing its condition, the directors assenting thereto, shall be jointly and severally liable, in an action founded on this statute, for debts due from the corporation at the time such dividend is made.

See §§ 1681–1683.

[A sale or gift of stock conveys all undivided earnings and right to future dividends, whether earned before or not. *King v. Follert*, 3 Vt. 385.

Treasurer refusing to pay dividends to stockholder on demand held personally liable therefor, in assumpsit for money had and received. *Williams v. Fulberton*, 20 Vt. 316.

The stockholder's right to a dividend is not a debt. There is no debt until the dividend is declared. *Chaffee v. R. R. Co.*, 55 Vt. 110.

Dividends on preferred stock are payable only on net earnings which are applicable to the payment of dividends; they are not payable absolutely and unconditionally, as interest, but only out of profits made by the company. *Id.*]

§ 3724. One-fourth of the capital stock shall be paid in before the corporation contracts debts, and no part of it shall be withdrawn or diverted from the proper business of the corporation; but such capital stock may be issued in payment for any property deemed necessary for the business of the

corporation, and the stock so issued shall be full paid stock and not liable to further call. No debts shall be contracted by the corporation exceeding in amount two-thirds of the capital stock actually paid in; and a director assenting to the creation of an indebtedness exceeding such amount, shall be personally liable for the excess.

Consolidation of actions against directors; costs. §§ 1681–1683.

§ 3725. The stockholders of a corporation shall be individually liable to its creditors to an amount equal to the amount unpaid on the stock held by them respectively, for contracts and debts made by the corporation.

[A stockholder made liable for the debts of a corporation cannot avoid such liability by transfer of his stock, made for that purpose. *Duchey v. Brown*, 24 Vt. 197.

It is not a constructive fraud for the stockholders to avail themselves of their superior advantages to obtain security for debts of the corporation due to themselves, to exclusion of other creditors; and they will not be postponed for this cause merely. *Whitwell v. Warner*, 20 Vt. 425.

The stock and property of a corporation is a trust fund pledged for the payment of its debts, and the creditors' right to payment and their lien are prior to the right of every stockholder. *Chaffee v. R. R. Co.*, 55 Vt. 110.]

§ 3726. If the capital stock of a corporation is withdrawn and refunded to the stockholders before the full payment of its debts, each stockholder shall be personally liable therefor, to the amount so refunded to him, to be recovered in an action on this statute; and if a stockholder is compelled to pay such debt or any part thereof, he may, by proceedings in chancery, compel the other stockholders, to whom any part of said capital stock has been refunded, to contribute their proportion of the sum so paid by him.

§ 3727. If a stockholder is indebted to the corporation, it shall have a lien upon his stock and property invested in such corporation to secure such debt.

See § 3691.

§ 3728. The capital stock of a corporation shall not be less than five hundred nor more than one million dollars, and shall be divided into shares not exceeding one hundred dollars each, such capital stock may be increased at a meeting of the stockholders warned for that purpose; but not to exceed the amount authorized in this section.

§ 3729. If a corporation increases its capital stock, a certificate thereof, signed and sworn to by the president and clerk, shall be filed with the secretary of State and recorded, and a certified copy thereof returned and recorded in the town clerk's office, in the same manner as the original articles of association.

[Where new stock in the corporation is issued that is to share in profits with existing stock, the

Capital stock; records; change of name; dissolution — Stats., §§ 3730-3735.

share owners have the right to take and share proportionately in the new stock. But this does not apply to the sale by the corporation of original stock, bought in by it and held as assets, where identity of the stock has been preserved, and it is sold for the payment of liabilities, or for general benefit. Page v. Smith, 48 Vt. 266.]

§ 3730. A corporation organized under the provisions of this chapter may reduce its capital to a sum not less than the amount required to authorize its formation, if, at a meeting of the stockholders warned for that purpose, the owners of two-thirds of its capital stock so vote; but no reduction shall be made so that the amount of its debts and liabilities shall exceed two-thirds of its capital as reduced; and such reduction shall not affect any existing liability of the corporation, its stockholders, or members.

§ 3731. When a corporation reduces its capital stock, a certificate thereof, signed and sworn to by the president and clerk, shall be filed with the secretary of State and recorded, and a certified copy thereof returned and recorded in the town clerk's office, in the same manner as provided in case of an increase of capital stock.

§ 3732. A corporation having no capital stock may divide its corporate rights or property into shares, regulate the term and manner of holding the same, and may raise money by assessment on the rights or shares of the members thereof, in proportion to their several interests, according to its articles of association or by-laws; and the payment of such assessments may be enforced by the sale of the rights or shares of a member of such corporation upon due notice, and the same may be redeemed within one year thereafter by payments of such assessment with interest and costs; but no other estate of a member shall be taken for the payment of such assessments.

See § 3691.

[Where one subscribes for stock in name of others without authority, himself making the first payment and afterwards assumed such shares, and they were set to him and the advance payments put to his credit, he was held to occupy the position of an original subscriber. Page v. Smith, 48 Vt. 266.]

The issuing of preferred stock of a railroad corporation with guaranteed interest is only a mode of earning money by pledging the original capital, and will not avoid a subscription to the original stock. R. R. Co. v. Thrall, 35 Vt. 536.

The charter of a railroad company provided that the directors might require payment of subscription to stock at such times and in such proportion as they should deem best. One condition of the subscription was that no assessment should exceed \$10 on a share. By one single vote of the directors sixteen assessments of \$5 each were laid, payable at different times. Held, that this was within the charter and the terms of the subscription. Id.

Assumpsit lies in favor of a corporation to recover legal assessments to stock for subscriptions, where no remedy is provided by statute, charter or by-laws, although the subscription contains no express promise to pay. Bridge Co. v. Tuttle, 2 Vt. 293. But where charter provides a remedy, as a forfeiture of the stock for non-payment, and there is no express promise to pay, that is the

only remedy. R. R. Co. v. Bailey, 24 Vt. 465. But where charters provide other remedies than by action, and there is an express promise to pay assessments, such remedies are not exclusive, and the action of assumpsit lies upon such promise. Id. Before a suit can be maintained for assessment upon a subscription to stock, actual notice, or notice pursuant to the charter or by-laws, must be given. R. R. Co. v. Thrall, R. R. Co. v. Thrall, 25 Vt. 536; Bridge Co. v. Tuttle, 2 id. 393.

Subscriber to stock cannot, in suit upon such subscription, deny legal organization of the corporation. R. R. Co. v. Langdon, 46 Vt. 284.

A corporation may take by purchase stock of a stockholder. Bank v. Champlain Co., 18 Vt. 131. Whether the purchase by a corporation of its own stock operates as a merger, depends upon the intent of the parties, and especially of the corporation, and its option. Page v. Smith, 48 Vt. 266. While a corporation so owns its own stock, the right of voting upon it is suspended. Id.

The issuing of preferred stock is a mode by which a corporation obtains funds for its enterprise, without borrowing money or contracting a debt. Chaffee v. R. R. Co., 55 Vt. 110.]

§ 3733. The corporation shall cause a book to be kept by its clerk in the town where its principal place of business is located, containing a record of the articles of association, the names of the holders of stock, their places of residence, the number of shares held by each, the amount actually paid in on each share, the time when they respectively acquired the same, and the transfers of shares; which book shall, during the usual business hours of each day, be open for the inspection of stockholders.

See §§ 3681-3683, 3713-3716.

§ 3734. The name of a corporation may be changed by a two-thirds vote of the stockholders, representing two-thirds of the capital stock, or, if it has no capital stock, by a two-thirds vote of all the members present at a meeting duly warned for that purpose, and by transmitting and causing to be recorded in the office of the secretary of State a certificate, signed by the clerk, setting forth the change made and the substance of the vote, and also causing a certified copy thereof to be recorded in the town clerk's office, where a certified copy of the original articles of association are required to be recorded; but such change shall not affect any existing liability.

§ 3735. Any corporation excepting savings banks and savings institutions organized under the laws of this State, may at a legal meeting called for the purpose, vote to wind up its affairs; and having so voted, may apply by bill of complaint to the court of chancery in the county where it has its principal office, setting forth such facts as may be material and praying for the winding up of such corporation. Any chancellor may thereupon issue interlocutory orders, requiring all the creditors of such corporation to file specifications of their claims with the clerk of such court within a time to be limited in such orders, not less than two months; and also requiring the credit-

Voluntary liquidation; service of process — Stats., §§ 3736-3742, 4164, 4165.

ors and stockholders, or other members of such corporation, or other person interested, to show cause at some regular term of said court why the prayer of such bill should not be granted; and prescribing the manner of notifying the creditors and other persons aforesaid, whether by personal delivery of notice, by acceptance of service, by publication, or by mail. This section shall not deprive the court of chancery of its jurisdiction in proper cases to grant relief to any minority of stockholders or members of such corporation.

Forfeiture of charter. §§ 1566 et seq.

§ 3736. Upon due proof that such orders as to notice have been complied with, and unless cause be shown to the contrary, the court shall decree the winding up of the affairs of such corporation; and may authorize its capital stock and assets to be divided among its stockholders, or the other persons thereto entitled; and may make all proper orders and decrees for the effectual carrying out of the purposes of this act.

Receiver appointed. §§ 3700, 3701. Distribution of funds. § 3703.

§ 3737. If it shall at any time appear that the claim of a party is in dispute, the chancellor may order an action to be commenced thereon within such short time as may be just; and may require such portion of the assets of the corporation as may seem necessary to be withheld from distribution to satisfy such claim if finally allowed. Or, the chancellor may order a reference of any such claim to a master, and may require the payment thereof, according to the master's report, if accepted, as a condition precedent to ordering a division of such assets.

§ 3738. All claims of creditors not so filed, or not sued upon, within the period so limited by the chancellor, shall be released and barred as to said corporation, its officers and stockholders; but nothing herein contained shall affect a right of recovery against any other person who may be liable thereon.

§ 3739. In case of such dissolution the clerk of the court shall forthwith cause a certified copy of the decree to be filed in the office of the secretary of State, and when so filed, the existence of the corporation shall terminate, in accordance with the terms of the decree.

§ 3740. A corporation organized for educational, literary or scientific purposes shall have no power to confer degrees.

§ 3741. Corporations organized under the provisions of this chapter shall be subject to future legislation; and the supreme court may, upon petition and after notice and hearing, and upon such terms and conditions as it deems just, dissolve such corporation

whenever it appears that its business transactions are repugnant to public policy or the laws of this State.

See § 3686.

§ 3742. Societies or private corporations formed or organized under the provisions of a previous law, for the purposes contemplated in this chapter, may have and exercise the powers conferred by such law.

TITLE XXVIII. INSURANCE, TELEGRAPH, TELEPHONE, ELECTRIC LIGHT AND EXPRESS COMPANIES.

CHAPTER CLXXVII.

Service of Process on Foreign Corporations and Companies.

- Sec. 4161. "Domestic" and "foreign" defined.
 4165. Service of process; stipulation to be filed.
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 4167. Duplicate copies of process; one forwarded to company.
 4168. Company not complying with law; agent, how punished.
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 4170. Amendment of writ.

§ 4164. The word "domestic" in this title, when applied to a corporation, company or co-partnership, shall mean organized under the laws of this State, and the word "foreign" when so applied, shall mean not organized under the laws of this State.

[Power of a foreign corporation to hold land. *Bridge Co. v. Royce*, 42 Vt. 739.]

§ 4165. No foreign insurance, express, shipping car, telegraph or telephone company, or a foreign company under any other name engaged in like business, whether said company is a corporation or co-partnership, shall do business in this State, until it has filed with the secretary of State a written stipulation, containing the name of the corporation and the place where chartered, or, if a co-partnership, the firm name and the names and residences of the co-partners, and agreeing that legal process affecting such company, served on said secretary of State, shall have the same effect as if served personally on said corporation or co-partners within this State; and such stipulation shall not be revoked or modified so long as any resident of this State has a cause of action against the stipulating company.

See § 1068.

[A foreign corporation is subject to suit in this State, where jurisdiction has been acquired. *Day v. Bank*, 13 Vt. 97.
 Jurisdiction over foreign corporation. *Osborne v. Ins. Co.*, 51 Vt. 278.]

Service of process; frauds — Stats., §§ 4166-4170, 4970, 5454-5458.

§ 4166. Service of process according to the stipulation shall be sufficient, and a copy of such stipulation, certified by said secretary of State, and his certificate that process has been served on him, shall be sufficient evidence thereof.

§ 4167. Process against or affecting any such foreign corporation, company or co-partnership may be served on the secretary of State by duplicate copies, one of which shall be immediately forwarded by the secretary of State, by mail, prepaid, to the corporation, company or co-partnership at its home office or to a person whom it designates; and there shall be paid to the secretary of State by the officer at the time of such service the sum of one dollar.

[A foreign insurance company doing business in this State is subject to the trustee process. *Machine Co. v. Boutelle*, 56 Vt. 570.]

§ 4168. If a person or agent for a foreign insurance, express, shipping car, telegraph or telephone company, or other foreign company doing like business, which has not complied with the requirements of this chapter, solicits or receives a risk or application for insurance, or receives money or value for such insurance by such company, or receives money or value for the transportation of a package or property by such express or shipping car company, or for the transmission of a message or dispatch by such telegraph company, or receives money, rent, royalty or income for such telephone company for the use of its instruments or lines, or for the sending of any message, he shall be fined not more than five hundred dollars and not less than one hundred dollars.

§ 4169. If a foreign insurance, express, shipping car, telegraph or telephone company, or other foreign company doing like business in this State, does not comply with the provisions of this chapter, process against it may be served by delivering a true and attested copy thereof, with the officer's return thereon, to an agent, messenger or operator of such company residing in this State.

§ 4170. The court before which any such action is pending may allow an amendment of the writ by striking out any of the defendants, or by the addition of others, on such terms as to the court seems just.

TITLE XXXII. CRIMES AND OFFENSES.

CHAPTER CCXV.

Frauds.

Sec. 4970. Signing or issuing false certificates of stock.

4971. Disqualifies offender from serving as juror.

§ 4970. A president or other officer or agent of a bank, railroad, manufacturing or other corporation who wilfully and designedly signs, with intent that it shall be issued or used, or causes to be issued or used, a false certificate or evidence of the ownership or transfer of shares of stock in such corporation, or a certificate or evidence of such ownership or transfer, which such officer has no authority to make or issue, shall be imprisoned in the State prison not more than ten years nor less than one year, and fined not more than one thousand dollars.

[Indictment under above section held to be defective. *State v. Haven*, 59 Vt. 399; s. c., 9 Atl. Rep. 841.]

§ 4971. A person convicted of the offense mentioned in the preceding section shall not be competent to sit as juror on the trial of any cause.

TITLE XXXVII. THE VERMONT STATUTES AND REPEAL OF EXISTING LAWS.

CHAPTER CCXXXV.

The Vermont Statutes and the Repeal of Existing Laws.

Sec. 5454. Vermont statutes defined.

5455. Take effect when.

5458. Effect of repeal of Revised Laws, etc., as to corporations.

§ 5454. This and the two hundred and thirty-four preceding chapters shall be designated as the Vermont Statutes, and they shall not, in any citation of the statutes, be reckoned as acts of the present year.

§ 5455. The Vermont Statutes aforesaid shall take effect from and after the first day of August, 1895, except the parts thereof as to which a different provision is expressly made therein.

§ 5458. The repeal of the Revised Laws, and the acts of the general assembly shall not affect associations or private corporations organized thereunder, but they may have and exercise the powers conferred thereby.

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CONSTITUTION OF VIRGINIA—1869.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE V.

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Sec. 14. The general assembly shall not pass any law impairing the obligation of contracts.

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Sec. 2. All writs, actions, charters, etc., shall continue.

ARTICLE V.

Legislative Department.

§ 14. * * * The general assembly shall not pass any * * * law impairing the obligation of contracts, or any law, whereby private property shall be taken for public uses without just compensation, * * *

Power of corporation to contract. § 1068, subd. 3.

[A corporate charter is a compact between the corporation and the government by which it derives its powers. *Pixley v. Nav. Co.*, 75 Va. 320.
An assessment act passed subsequently to a charter, and modifying same by making stock-

holders personally liable for company debts, held constitutional. *Anderson v. Commonwealth*, 18 Gratt. 295. How far general assembly has power, from time to time, to annul or alter acts of incorporation. *Admrs. v. Assurance Soc.*, 4 H. & M. 315.]

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Taxation and Finance.

§ 12. The credit of the State shall not be granted to, or in aid of, any person, association or corporation.

§ 14. The State shall not subscribe to, or become interested in, the stock of any company, association or corporation.

See §§ 1106, 1137.

§ 21. The liability to the State of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made by the State to such company or institution, shall not be released or commuted.

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§ 2. All writs, actions, causes of action, prosecutions, and rights of individuals and of bodies corporate, and of the State, and all charters of incorporation, shall continue: * * *

See § 1068, subd. 2, and cross-references. Charters. § 1145. Writ of quo warranto. § 3922.

THE CODE OF VIRGINIA—1887.

TITLE II. RULES OF DECISION.

CHAPTER II.

Construction of Statutes.

Sec. 5. The word "seal" construed.

§ 5. In the construction of this Code, and of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature:

* * * * *

12. In cases in which the seal of any corporation, court, or public office shall be required to be affixed to any paper executed by a corporation, or issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal made upon the paper alone, as well as an impression made by means of a wafer, or of wax affixed thereto. * * *

See § 1068, subd. 1. Impression on paper as valid as wax. § 2841.

TITLE XII. PUBLIC DEBT.

CHAPTER XXII.

Concerning the Public Debt.

Sec. 403. Chartered companies to pay taxes in money.

404. Charter forfeited if taxes not paid in money.

405. Attorney-general to institute proceedings to have charter forfeited.

§ 403. Every corporation hereafter chartered by the general assembly, or under the laws thereof, and every corporation now in existence, whose charter shall hereafter be amended, renewed, or extended, shall pay in current money of the United States all its taxes and other demands against it due the State, and every such charter shall be granted upon the express condition that such taxes and other demands shall be so paid.

See § 485, and cross-references; Act of 1897, at pp. 30-32.

[Corporations organized under State laws, but employed by national government for certain duties, cannot claim exemption from any State taxation on mere ground of being employed as a government agent. *Tel. Co. v. City*, 26 Gratt. 1.]

§ 404. If any such corporation, or any other corporation, whose charter is subject to repeal under the general laws of this commonwealth, or by the express provisions of its own charter, shall pay its taxes or other demand against it due the State, or any part thereof, in any other thing than current money of the United States, the said corporation shall forfeit all the rights, privileges, and franchises granted it by its said charter.

§ 405. The auditor of public accounts, whenever the returns or records in his office show that such corporation has paid its taxes or other demands against it due the State, or any part thereof, in any other thing than current money of the United States, shall give notice thereof to the attorney-general, who shall forthwith institute the proper legal proceedings to have the charter of said corporation declared forfeited.

TITLE XIII. PUBLIC REVENUE.

CHAPTER XXIV.

Assessment of Taxes on Persons and Property; Licenses, how Procured.

Sec. 485. How machinery in mining and manufacturing establishments assessed.

492. By whom property is to be listed; to whom taxed.

533. Licenses, to whom granted.

534. When a license is required; prepayment of tax a condition precedent to issue of license.

535. How licenses applied for and granted; what shall constitute a license.

558. License, a personal privilege.

564. Property used in licensed business not exempt from taxation.

§ 485. The commissioner, in assessing the value of machinery and other fixtures to real estate, in mining, manufacturing, or similar establishments, shall ascertain the value of all such machinery and fixtures attached thereto, and include the aggregate value thereof as improvement on real estate in the same manner and to the same effect as in the case of buildings and enclosures added to real estate, under the provisions of this chapter: Provided however, That if the machinery and other fixtures aforesaid shall be the property of one person, and the real estate, in or upon which the said machinery and fixtures shall be used, be the property of another, the said machinery and fixtures shall be assessed and taxed against the owner thereof as personal property, and

so listed by the commissioner. For any failure on the part of the commissioner to comply with this or any of the four preceding sections, he shall forfeit fifty dollars for each failure.

Taxes to be paid in money; forfeiture of charter for failure, etc. §§ 492-495. See Acts of 1890, at pp. 28, 29. Licensed property not exempt from taxation. § 561.

[See *Andrews v. Auditor*, 28 Gratt. 128.]

§ 492. (As amended Feb. 24, 1898; L. 1898, ch. 490.) * * * If the property belong to a company or firm, it shall be listed by and taxed to the company or firm. If the property belong to a corporation, which property is not otherwise taxed, it shall be listed to the corporation by the principal accounting officer, and at the principal place of business of such corporation; but if not so listed it shall be listed and taxed in the place where the property is. If the property consist of money, bonds, or other evidences of debt, under the control or in the possession of a receiver or a commissioner, it shall be listed by and taxed to such receiver or commissioner, and the clerk of each court shall furnish the commissioner of the revenue with all bonds and funds held by the commissioners or receivers under the authority of the court. * * *

See § 485, and cross-references.

[Capital stock and shares of capital stock are distinct things; former belongs to the corporation, the latter to individuals. Both may be taxed, and it is not double taxation. *Commonwealth v. Charlottesville*, 90 Va. 790; s. c., 20 S. E. Rep. 364.]

§ 533. A license may be granted to any citizen of this State; to any person entitled to the privileges and immunities of a citizen thereof; to any person residing in the State; to any firm or company having a place of business in the State, and doing business thereat; to any corporation created by this State, or any of the United States, and to any other person on whom a license tax shall be specially imposed.

§ 534. Whenever a license is specially required by law, and whenever the general assembly shall levy a license tax on any business, employment, or profession, either with or without compensation, upon any agreement express or implied. In all cases where such tax is imposed, it shall be lawful to grant a license for the business, employment, or profession so taxed; and if the manner of granting a license shall not be prescribed by law, the license may be granted according to the law which governs in similar cases, and subject to such restrictions as pertain thereto; but no person shall be allowed the privilege of selling throughout the State under one license, ex-

cept by special provision of law; and in all cases the payment of the tax required shall be a condition precedent to the issue of such license.

§ 535. Every person, corporation, company, firm, partnership, or association desiring to obtain a license to prosecute any business, employment, or profession, shall make application therefor in writing to a commissioner of the revenue of the county or corporation wherein such business, employment, or profession is proposed to be conducted, in which shall be stated the residence of the applicant, the nature of the business, employment, or profession, the place where it is proposed to be prosecuted, and the amount of tax prescribed by law, accompanied with a certificate of the treasurer of such county or city that the amount of the tax in gold or silver coin, United States treasury notes, or national bank notes has been deposited with him by the applicant. Upon the receipt of such application, the commissioner, if satisfied of its correctness, shall make and sign the following endorsement thereon: "I find the within application in due form, and accompanied with the certificate of the treasurer of the county (or corporation) that the sum of dollars, in gold or silver coin, United States treasury notes, or national bank notes has been deposited with him." The application so endorsed shall be filed by the commissioner in his office, and a duplicate thereof delivered to the applicant. Such duplicate shall constitute a license to prosecute the business, employment or profession therein named, unless it be a business for which a license can be granted only on the certificate of a court, in which case the applicant upon obtaining such certificate shall be entitled to the license.

§ 558. Every license shall be held to confer a personal privilege to transact the business, employment, or profession which may be the subject of the license, and shall not be exercised except by the person, firm, company, or corporation licensed, unless specially authorized by law to do so.

§ 564. A license shall not be construed to exempt from taxation the property used in the licensed business, nor the profits of such business.

See § 485, and cross-references.

TITLE XVII. CORPORATIONS GENERALLY.

CHAPTER XLVI.

Of Corporations Generally.

- Sec. 1068. General powers of every corporation.
 1069. Certain charters, after fifteen years, liable to amendment, etc.
 1070. General restrictions on corporations.
 1071. Restrictions qualified.
 1103. Disposition of property, when corporation dissolved; it may sue and be sued, etc.

Corporate powers — Code, § 1068.

Sec. 1104. Every company to keep an office in this State; foreign company to appoint agent for process; copy of charter to be recorded, etc.

1105. Officers of corporation failing to comply with preceding section to be personally liable.

§ 1068. Every corporation, in respect to which it is not otherwise provided, shall (1) Have perpetual succession and a common seal, which it may alter or amend at its pleasure,

Word "seal" construed. § 5. Impression on paper as valid as on wax. § 2841. Limitation of charter of manufacturing corporation. § 1143. See note to subd. 4.

2. And may sue and be sued, implead and be impleaded,

Actions to continue. Const., Schedule. See § 1103. Corporation to keep office in State for service of process. § 1104. Evidence of incorporation. § 1150. How trustee or receiver of corporation may compromise claims due it. § 2709. Attachment, when issued, etc. §§ 2959-2964. Proceedings in quo warranto. §§ 3022-3028. Jurisdiction of circuit courts in. § 3058. Of chancery. § 3080. Court in which proceedings are commenced. §§ 3214-3217. Of process and order of publication. §§ 3224-3229. Proof of incorporation not required, when. § 3280. Executions against corporation. § 3582. Indictments and process thereon. § 4015. Jurisdiction of this State over foreign corporation. Act of 1890, at p. 27.

[Corporation must sue in its corporate name. Porter v. Uekervis, 4 Rand. 359. A sergeant of a corporation has no right to sue for money due an insolvent debtor. Darby v. Henderson, 3 Munf. 115; 1 R. C. 285.

Payment to a corporation under mistake of law cannot be recovered back. Mayor v. Judah, 5 Leigh, 305.

President and directors of turnpike road are a corporation, liable to be sued for work and labor performed and materials furnished for them. Dunningtons v. Road, 6 Gratt. 160. This case distinguished from case Sayre v. Same Corp., 10 Leigh, 454.

In action by corporation, question whether corporation has forfeited its charter is not open for inquiry, unless forfeiture has been ascertained by sentence of a court in a proper proceeding for the purpose. Crump v. Mining Co., 7 Gratt. 352.

A debt is due to a partnership and partners are afterwards incorporated; debt then becomes debt of corporation. It is incompetent to sue for it in corporate name in court of equity. Griffin v. Macanley, 7 Gratt. 476.

A creditor of a corporation, the whole stock and property of which has been transferred to a successor, which takes it subject to debts of first corporation, and which it is amply able to pay, is not bound to convene all the creditors before the court, but may prosecute his own claim alone. Barksdale v. Finney, 14 Gratt. 338.

Where a corporation liable for personal injuries inflicted by its agents, become merged into another corporation, it is responsible for such liability, and action at law may be maintained for such injuries against either of said corporations, but not a joint action against both. Langhorne v. Richmond, 91 Va. 369; s. c., 22 S. E. Rep. 159.

Action against corporation in its former name cannot be defeated by showing that it had

changed its name without any change of membership. Weldley v. Shen. Co., 83 Va. 768; s. c., 3 S. E. Rep. 376.

Maxim "nullum tempus occurrit regi" not applicable to a corporation having power to sue and be sued, though State be an incorporator thereof. But such corporation is entitled to all legal defenses which pertain to natural persons. McClanahan v. Lunatic Asylum, 88 Va. 466; s. c., 13 S. E. Rep. 977.

Corporation which is created by consolidation of other corporations is ordinarily deemed the same as each of corporation which form it for purpose of necessary liability to old corporations, and may be sued under its new name for their debts as if no change had been made in name or organization of original corporations. Langhorne v. Richmond, 91 Va. 369; s. c., 22 S. E. Rep. 159.

Where one is notified of his appointment as director without declining it, and afterwards receives summons for the company without remonstrating, held, his acceptance may be presumed, and it is no defense to a suit against the company that he, in absence of collusion, failed to deliver the summons. R. R. Co. v. Brown, 90 Va. 340; s. c., 18 S. E. Rep. 278.

Where corporation claims right to abate a milldam, as a nuisance, because it obstructs navigation of a stream, and such abatement would produce great loss to millowner, and great inconvenience to public, court of equity has jurisdiction to prevent such abatement, and to preserve the millowner his establishment, until question whether millowner has or has not a right to keep up his dam, be decided. Crenshaw v. Slate Co., 6 Rand. 245.

Inadequacy of damages which any jury could give to the millowner in a suit against corporation for loss and injury sustained by him by removal of his dam is also a good ground for interference of equity. Id.

A corporation of another State may maintain an action in the courts of Virginia. Bank v. Pindall, 2 Rand. 465; Taylor v. Bank, 5 Leigh, 471.

A stockholder cannot sue in relation to corporate property without alleging refusal of the corporation to do so after reasonable demand, or facts show that such demand would have been unavailing. Mount v. Trust Co., 25 S. E. Rep. 891.]

3. Contract and be contracted with,

Laws impairing obligation of contracts prohibited. Const., art. V, § 14.

If there be nothing within the scope or object of a corporation to prohibit it from contracting debts or borrowing money to carry on its business, it may lawfully do so. Burr v. McDonald, 3 Gratt. 206.

As a corporation may contract debts to its stockholders, it is as much bound to pay or secure such debts, as debts due to strangers, and fact that a deed is given to secure such a debt does not render it fraudulent, unless some fraudulent intent be shown. Id.

Except where it is otherwise provided in its charter, expressly or by clear implication, a corporation, in the use of its property, exercises all its powers in transaction of its business, standing upon same footing as individuals, and is subject to same control under police powers in the State as a municipal corporation. R. R. Co. v. City, 26 Gratt. 83.

A corporation is only bound by its agents when they keep within limits of their authority. Stillman v. R. R. Co., 27 Gratt. 119.

It may bind itself in any way that a natural person may. Kelly v. Board, 75 Va. 263.

But can exercise only such powers as are conferred expressly or impliedly by the legislature, and in all cases of ambiguity doubts shall be resolved in favor of the public. Roper v. McWhorter, 77 Va. 214.

Persons dealing with a corporation are affected with notice of the provisions of its charter, con-

Corporate powers; power to hold real estate — Code, §§ 1069-1071, 1103.

stitution and by-laws. *Haden v. Assn.*, 80 Va. 683; *Bocock v. Iron Co.*, 82 Id. 913; s. c., 1 S. E. Rep. 325.

And persons so dealing must be presumed to have acted with reference to such provisions. *Whitehurst v. Whitehurst*, 83 Va. 153; s. c., 1 S. E. Rep. 407.]

4. Purchase, hold, and grant estates, real and personal.

Restrictions on corporation. § 1070. What company may do with land. § 1109. Shares of stock deemed personal property. § 1125. Charter to state amount of real estate to be held. § 1145. Stock personal property. § 1149.

[A written agreement for sale of lands of corporation, though not with the common seal affixed, may be enforced in equity. *Le Grand v. College*, 5 Munf. 324.

Seal of corporation not necessary to give validity to an agreement for sale of real property. *Banks v. Poitiaux*, 3 Rand. 136.

Corporations created by statute in Virginia cannot take and hold real estate for purposes wholly foreign to their creation. *Rivanna Co. v. Dawson*, 3 Gratt. 19.

A general prohibition upon corporation to do other things will not be inferred from a provision in its charter specially authorizing it to do certain things. *Id.*

Corporations have an incidental power to acquire property and contract generally in furtherance of their chartered purposes. *Id.*

A bequest to a corporation, of its own stock, is valid. *Id.*

General powers of corporation discussed. *Id.*
A charter of B. corporation made its stock personal estate; but provided that its real estate should only be conveyed as other real estate. The legal title could only pass by deed from B. *Barksdale v. Flaney*, 14 Gratt. 338.

A corporation may execute a deed by any agent specially authorized by the stockholders. *Burr v. McDonald*, 3 Gratt. 206.

Deed of corporation executed by the president under seal of corporation is a valid mode of executing deed of trust. *Bank v. Goddin*, 76 Va. 503.

Corporations may take and hold estates for the use of another, even for purposes foreign to objects of their creation; and a devise or bequest to a corporation in trust, if otherwise valid, is not for that reason void. *Episcopal Soc. v. Churchman*, 80 Va. 718.

Where president signed contract for purchase of real estate without authority of directors or charter, but purchase was accepted by company, it was held to have ratified the purchase, although details thereof were not shown by the minutes. *Land Co. v. Montgomery Co.*, 89 Va. 192; s. c., 15 S. E. Rep. 524.

A stockholder of a corporation, conveying land to it, and reserving a vendor's lien, held not estopped to enforce it as against a subsequent purchaser. *Biggs v. Elliston Development Co.*, 25 S. E. Rep. 113.]

5. And make ordinances, by-laws, and regulations consistent with the laws of this State and of the United States, for the government of all under its authority, for the management of its estates, and the due and orderly conducting of its affairs.

[Rules and regulations of a corporation made for the government or conduct of its officers, do not become terms and conditions of bond of its officers unless such intention is expressed on face of bond. *R. R. Co. v. Kasey*, 30 Gratt. 218.]

§ 1069. Every act of incorporation (not within the operation of section twelve hundred and forty*), passed by the general assembly, unless it be otherwise expressly provided in the act, may, after fifteen years from its passage, be amended, altered, or repealed, by the assembly in like manner as if the right to amend, alter, or repeal the same had been expressly reserved in such act of incorporation.

See §§ 1143, 1145; Const., art. V, § 14.

[Under the power reserved in charter of a corporation, to repeal, alter or modify the charter, the legislature may repeal charter, but cannot modify it without consent of corporation. But if corporation refuses to consent to the modification, it must discontinue its business as a corporate body. *Yeaton v. Bank*, 21 Gratt. 593.

As to its forfeiture of charter, see *Stillman v. R. R. Co.*, 27 Gratt. 119.]

§ 1070. (As amended February 17, 1890.) No incorporated company shall hold any more real estate than is proper for the purposes for which it is incorporated; nor employ its capital, money or effects, or otherwise engage in transactions or business not proper for those purposes. One company shall not subscribe to, purchase, or otherwise acquire the stock of another company unless specially authorized by act of legislature, or by terms of decree of court, or order of the judge incorporating the company or amending charter thereof. If any company shall acquire stock in any other company contrary to the provisions of this section, it shall not be lawful for it to vote such stock in any general or special meeting of stockholders.

See § 1068, subd. 4.

[Where land is conveyed to a corporation in excess of the quantity it is authorized by its charter to hold, the only remedy is by proceedings against corporation to forfeit its charter. *Land Co. v. Louisville Co.*, 24 S. E. Rep. 1016.

Statute of Mortmain is not in force in this State. *Id.*]

§ 1071. The preceding section shall not prevent a company from receiving stocks or other property in satisfaction of any judgment, order, or decree, or as collateral security for or in payment of any debt, or from purchasing stocks or other property at any sale made for its benefit. If the company so receive shares of its own stock, it may either extinguish the same or sell and transfer such shares to a purchaser. While a company holds such shares of its own stock, no vote shall be given thereon.

§ 1103. When any corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its work and property, and debts due to it, shall be subject to the payment of debts

*Relating to corporations for Internal Improvement.

due by it, and then to distribution among the members, according to their respective interests; and such corporation may sue and be sued as before, for the purpose of collecting debts due to it, prosecuting rights under previous contracts, with it, and enforcing its liabilities, and distributing the proceeds of its works, property, and debts, among those entitled thereto. Notice to or process against such corporation to answer in any suit or civil proceeding, shall be sufficiently served by publication thereof once a week for four successive weeks in some newspaper published in the county or corporation wherein the suit or proceeding is, or, if there be no newspaper published in said county or corporation, in a newspaper published in some other county or corporation in the State.

See § 1068, subd. 2, and cross-references.

[Under above section, a corporation though dissolved or expired may be sued to enforce its liabilities, and its stockholders are not necessary parties. *Hamilton v. Glenn*, 85 Va. 901; s. c., 9 S. E. Rep. 129.

A cause of forfeiture of charter cannot be taken advantage of collaterally or incidentally. *Pixley v. Nat. Co.*, 75 Va. 320. Where, pending an appeal in a suit against a corporation, charter expires by efflux of time, the appeal must abate. *Rider v. Union Factory*, 7 Leigh, 154. But see *Bank v. Patton*, 1 Rob. 499; *May v. Bank*, 2 Id. 56.

Suit may be brought in the name of a dissolved bank. *Crews v. Bank*, 31 Gratt. 348.]

§ 1104. Every company incorporated under the laws of this State or another State, and doing business in this State, except an insurance company incorporated under the laws of another State, at which all claims due residents of the State against such company may be audited, settled and paid. Every such company incorporated under the laws of another State shall, by a written power of attorney, appoint some person, residing in the State, its agent upon whom all lawful process against the company may be served, and who shall be authorized to enter an appearance in its behalf. Such power of attorney, and a duly authenticated copy of the charter of the company, shall be delivered to the clerk of the court of the county or corporation wherein such office is located, who shall record the same and transmit copies thereof to the secretary of the commonwealth, for which service the clerk shall receive a fee of ten dollars to be paid by the company. Every such company heretofore incorporated, if it has not already done so, within sixty days after this Code takes effect, and every such company hereafter incorporated, before commencing business in this State, shall establish an office and appoint an agent as hereinbefore required.

See § 1068, subd. 2, and cross-references. Process, how served, etc. §§ 3224-3229. Charter to state what. § 1145.

[General assembly of this State has authority to forbid foreign corporation engaging in any pursuit within this State; and, of consequence, to grant permission to engage therein only upon terms. *Slaughter's case*, 13 Gratt. 767.

Bill which charges that foreign corporation has not complied with provisions of above section must also allege in what particulars it has failed to do so. *Assn. v. Ashworth*, 91 Va. 706; s. c., 22 S. E. Rep. 521.

While a corporation may, by its agents, assume business anywhere, unless prohibited by its charter or prevented by local laws, it can have no residence or citizenship except where it is located by or under authority of its charter. *Cowardin v. Ins. Co.*, 32 Gratt. 445.

A railroad incorporated in another State, which operates a road in this State, is liable to be sued in courts of Virginia for an injury which occurred on said road operated in this State; and said foreign company has no right to remove suit to United States. *R. R. Co. v. Noell's*, 32 Gratt. 394.

Maryland corporation can have no legal existence outside of that State; yet, as lessee of a Virginia railroad company, exercising all the powers and functions of the latter, it may be subject to all its duties and obligations; and may be treated as a Virginia corporation, so far, at least, as its liability to citizens is concerned. *Id.*]

§ 1105. The officers, agents, and employees of any such company, doing business in this State, without complying with the provisions of the preceding section, shall be personally liable to any resident of the State having a claim against such company, and, moreover, service of process upon either of said officers, agents, or employees, shall be deemed a sufficient service on the company.

See § 1068, subd. 2, and cross-references.

TITLE XVIII. CHARTERED COMPANIES, COMMON CARRIERS AND RAILROAD COMMISSIONER.

CHAPTER XLVII.

Of Joint-Stock Companies Generally; and of Companies Chartered by Courts.

Sec. 1106. Notice of opening books of subscription; price of shares.

1107. Amount to be paid at time of subscription.

1108. Subscriptions to railroads and canals may be made in land.

1109. What company may do with land.

1110. How long books kept open; how subscriptions reduced if capital stock exceeded.

1111. Power to reopen books of subscription.

1112. Commissioners to call general meeting of subscribers.

1113. Annual meeting of stockholders.

1114. When and how general meeting called.

1115. Number of stockholders requisite to constitute meeting.

1116. Votes each stockholder is entitled to.

1117. When to make oath that he is a bona fide holder.

1118. President and directors, how appointed; number and term; their powers; removal from office.

1119. Their pay; how vacancies in board filled.

1120. Cashier and other officers; their bonds.

Subscriptions; commissioners for receiving — Code, §§ 1106–1112.

- Sec. 1121. Account books to be kept, and open to board.
 1122. When board to meet; proceedings to be recorded.
 1123. Their annual report; their proceedings open to stockholders.
 1124. Books of subscription to be delivered to directors; when they may receive farther subscriptions, and at what price.
 1125. Shares of stock to be personal estate; transfer book.
 1126. To whom money received for subscriptions by commissioners to be paid.
 1127. How subscription money recovered; sale of stock therefor.
 1128. How proceeds of sale applied.
 1129. How residue recovered.
 1130. Stock not assignable until paid for.
 1131. Who deemed owner of stock.
 1132. Issue of certificates of stock.
 1133. How stock transferred.
 1134. When transferred and certificate returned, company may issue new certificates.
 1135. How new certificates may issue, when former one lost.
 1136. When dividends declared; how applied, when stockholder owes company.
 1137. Notice of dividend to be given to second auditor, when State is stockholder; when dividend to State to be paid.
 1138. Members of board liable, if dividend declared of capital.
 1139. When dividend of capital may be made.
 1140. Notice of dividends to be published.
 1141. When corporate rights of company to cease.
 1142. Company to exhibit books, etc., to agent of general assembly.
 1143. Limitation of charters of manufacturing and mining companies.
 1144. Section 1107 to apply to such companies.
 1145. How charters of incorporation granted, altered, or amended by circuit courts; where to be recorded.
 1146. Act of incorporation effective, when charter lodged with secretary of commonwealth.
 1147. Officers and directors of such companies.
 1148. Minimum capital; price of shares; how subscriptions recovered; what certificate of stock to show number of votes stockholder entitled to.
 1149. Stock to be personal estate, and assignable; lien given by company to prefer one creditor shall endure to all.
 1150. What to be evidence of incorporation.
 1151. Fees of secretary of commonwealth and clerks of courts.
 1152. Annual reports, when to be made.
 1153. Penalty for failure; how enforced.

§ 1106. When, by an act incorporating a joint-stock company, commissioners are appointed to receive subscriptions to the capital stock thereof, public notice of thirty days shall be given by them of the time and places at which books will be opened for subscriptions; and the subscriptions shall be in shares of one hundred dollars each.

State not to hold corporate stock. Const., art. X, § 14. One company not to subscribe to stock of another. § 1070. How long subscription books to be kept open. § 1110. Power to reopen books. § 1111. Books of subscription to be delivered to directors. § 1124. Subscription, how recovered. § 1127.

§ 1107. Upon every subscription for shares in any joint-stock company, there shall be paid upon each share two dollars at the time of subscribing, and the residue thereof as required by the president and directors. The sums payable at the time of subscribing shall be paid to the commissioners.

To whom money received by subscription to be paid. § 1126. Same, how recovered. §§ 1127–1130. See § 1144. Same. § 1148.

§ 1108. It shall be lawful for any railroad or canal company which may be projected or in process of construction to receive land in lieu of money in payment of subscriptions to the unsubscribed capital stock thereof; which land may be received by said company in payment of such subscriptions at such valuation as may be agreed upon between said company and the party desiring to make such payment.

§ 1109. Every such company may receive and hold any real estate which may be thus conveyed to it in payment of subscriptions to the unsubscribed capital stock thereof, and may sell, lease, mortgage, and encumber the same in such manner as it may deem best.

See § 1068, subd. 4, and cross-references.

§ 1110. The books for subscriptions shall be kept open for ten days. If within that time more than the whole capital stock be subscribed, the commissioners at the place first named in the act shall reduce the subscriptions so as to have the amount of such capital stock and no more; deducting the excess from the largest subscriptions in such manner that no subscription shall be reduced while any one remains larger.

See § 1106, and cross-references.

§ 1111. If at the end of the ten days so much of the capital stock shall not have been subscribed as is necessary to incorporate the subscribers, the books may thereafter be continued open or closed, and reopened from time to time, with or without notice, as the commissioners at the said first-named place may deem best, until the whole capital stock shall be subscribed, or until the election of the president and directors.

See § 1106, and cross-references.

§ 1112. When it appears to the commissioners at the place first named in the act, that so much of the capital stock is subscribed as is sufficient to incorporate the subscribers, the said commissioners shall give notice thereof by publication in a newspaper, for not less than two weeks, and call a general meeting of the subscribers at a certain time and place, which time shall not

Meetings of stockholders; officers and directors — Code, §§ 1113-1118.

be less than fourteen nor more than thirty days from the first day of such publication. The subscribers, their executors, administrators, or assigns, shall stand incorporated from the time of such meeting, unless in said meeting it be determined otherwise.

Annual meetings, manner of conducting, etc. §§ 1113-1118.

§ 1113. An annual meeting of stockholders in any joint-stock company shall be held on such day as is or may be prescribed by law, or if none be so prescribed, on such day as the stockholders may in general meeting from time to time appoint, and at such place as shall be fixed from time to time by the board of directors, of which notice shall be published for two successive weeks in a newspaper. A list of the stockholders in any bank shall, for one month before the annual meeting, be hung up in the most public room of the bank.

See § 1112, and cross-reference.

[Fact that corporation is directed by its charter to hold annual meetings of its stockholders, at such times and places as its by-laws should prescribe, will not, in the absence of a prohibition, prevent it from holding other meetings, at which it may perform all acts which would be lawful at its annual meeting. *Burr v. McDonald*, 3 Gratt. 206.]

§ 1114. A general meeting of stockholders may be held at any time, upon the call of the board of directors, or of stockholders holding together one-tenth of the capital stock, upon their giving notice of the time and place for such meeting, for thirty days, in a newspaper published in or near the place at which the last annual meeting was held.

See § 1112, and cross-reference.

[Although charter requires a general annual meeting, company may hold other general meetings as often as interests of the company require, at which stockholders may remove and appoint officers. *Burr v. McDonald*, 3 Gratt. 215.]

§ 1115. To constitute a meeting of stockholders, there must be present those who can give a majority of all the votes which could be given by all the stockholders. If a sufficient number fail to attend at the time and place for a meeting, those who do attend may adjourn from time to time until a meeting shall be regularly constituted. A meeting of the stockholders may adjourn from time to time until its business is completed.

See § 1112, and cross-reference.

§ 1116. In a meeting of stockholders, each stockholder may, in person or by proxy, give one vote on each share of stock held by him in the same right.

Corporation not to vote stock held by it. § 1070. See § 1112, and cross-reference. Who deemed owner of stock. § 1131. Certificate of stock to show what. § 1148.

§ 1117. When a vote is offered to be given at any meeting, upon stock transferred within sixty days before such meeting, if any present object to the vote, it shall not be counted, unless the stockholder has made or shall make oath that he is the bona fide holder of the stock on which such vote is to be given.

See § 1112, and cross-reference.

§ 1118. There shall be for every company a president and directors, who shall be a board to have all things done that are proper to be done by the company, except so far as may be otherwise provided by any law of the State, or any by-law or regulation of the stockholders. The stockholders may, in general meeting, prescribe the number of directors by a by-law, to take effect at the next annual meeting; but unless a different number be prescribed, there shall be five directors besides the president. The directors, and where it is not otherwise provided, the president also, shall be elected by the stockholders in general meeting. The stockholders, in general meeting, or other appointing power, as the case may be, may remove any director and fill the vacancy caused by such removal; but unless so removed, the directors shall continue in office until the next annual meeting of the stockholders, and until their successors shall be appointed. Should the number of directors be at any time reduced below the number necessary to hold a meeting of the board, the stockholders, or other appointing power, may fill the vacancies.

See § 1112, and cross-reference. Charter to contain what. § 1145. Officers and directors, how appointed. § 1147. Capital not exceeding \$10,000, number of directors. Act 7.

[Where act of Incorporation provides that there shall be "three directors, out of whom a president shall be chosen," it is sufficient if president be elected by a legally constituted meeting, and at the same time with the other directors, without having been previously appointed a director. *Currie v. Ins. Soc.*, 4 H. & M. 315.]

Officers of corporation possess no private franchise in their offices, but are ministerial agents of the company, to conduct its business for benefit, and under authority of company. They may, therefore, be removed by stockholders at any time. *Burr v. McDonald*, 3 Gratt. 215.

Officer of corporation, though irregularly elected, becomes, by such election, an officer de facto, and all his acts done under authority of company, and colore officii are binding on company, and cannot be impeached by stranger on ground of want of authority. *Id.*

Directors; books of accounts; reports, etc.—Code, §§ 1119-1125.

President is not, *ex officio*, the agent of corporation to sell property which it may direct to be sold; and unless appointed to sell, his representations are not binding on corporation. *Crumpp v. Mining Co.*, 7 Gratt. 352.

Board of directors of a railroad corporation have no authority, without sanction of a lawful meeting of stockholders, to make a lease for years of the road and property of company, with authority to lessees to operate road and charge for carrying upon it. *Stevens v. Davison*, 18 Gratt. 819.

Though by-law of the company authorizes directors to alter or amend the by-laws, directors have no authority, under said by-laws or otherwise, to disregard or alter another by-law which was intended to impose a limitation upon their powers. *Id.*

Authority of president of railroad company to make contracts for necessary labor for the company is incident to his office. And he may furnish evidence of the amount payable under contract, either before or after service, and put that evidence, in his discretion, into the form of a due bill or promissory note; unless such power is restricted by special legislation or by regulations of company known to the other contracting parties. *R. R. Co. v. Sneed*, 19 Gratt. 354.

President and acting manager of a private corporation being trustee in a deed of marriage settlement, and as trustee sells the trust property in violation of his duty as trustee, and purchases a portion of it for the corporation, the latter is a participant in violation of the trust and liable therefor. *Barksdale v. Flinn*, 14 Gratt. 238.

Where one is notified of his appointment as director without declining it, and afterwards receives summons for the company without remonstrating, hold his acceptance may be presumed, and it is no defense for company that he, in absence of collusion, failed to deliver the summons. *R. R. Co. v. Brown*, 90 Va. 340; s. c., 18 S. E. Rep. 278.

Unless taken away, authority is inherent in treasurer to draw checks; but power to bind corporation by indorsing negotiable notes is not, and he who takes its note from an officer of corporation does so at his peril. *Davis v. Rockingham*, 89 Va. 290; s. c., 15 S. E. Rep. 547.

Circumstances held not sufficient to warrant an implication of authority in treasurer or "general manager" to bind company by indorsing note. *Id.*

§ 1119. There shall be no compensation for services rendered by the president or any director, unless it be allowed by the stockholders. During the absence of the president, the directors may appoint a president *pro tempore*. The directors may also fill any vacancy which may occur in the office of president or director otherwise than by removal.

§ 1120. The board shall appoint a cashier or treasurer, and such other officers and agents as it may deem proper, and prescribe their compensation. They shall give bonds, payable to the company, with such conditions as the board may require, and with such sureties as it may approve, and hold their places during its pleasure.

See § 1118, and note.

[Sureties of a corporate officer are liable for moneys taken by him. *Allison v. Bank*, 6 Rand. 203.]

§ 1121. The board shall cause regular books of accounts to be kept and balanced annually or semi-annually. All books, papers, correspondence, and funds in posses-

sion of any officer of the company shall at all times be subject to the inspection of the board, or a committee thereof.

See § 1142, and cross-references.

§ 1122. The board shall hold meetings at such times as it shall see fit, or the president require. Questions before it shall be decided *viva voce*. No member of the board shall vote on a question in which he is personally interested otherwise than as a stockholder. The names of those voting shall be taken down, if desired at the time by any member. There shall be a record of the votes and of all proceedings of the board; and the same shall be verified by the signature of the president, or president *pro tempore*.

See § 1118, and note.

[Majority of directors constitute a board to do business. *Booker v. Young*, 12 Gratt. 303.]

§ 1123. The board shall make a report of the condition of the company to the stockholders at their annual meeting. Accompanying the report there shall be statements of the receipts and disbursements for a year ending on such day as the by-laws may prescribe, and a statement of the surplus or contingent fund then on hand. Within thirty days next before such meeting the records of the proceedings of the board shall be open to the inspection of three or more stockholders holding together one hundred shares of the capital stock. It shall be produced to the stockholders when demanded by them at any meeting.

By-laws of corporation. § 1068, subd. 5. Annual report, when to be made. § 1152.

§ 1124. (As amended February 13, 1890.) Immediately after the election of the president and directors the books for receiving subscriptions shall be delivered to them. If the whole capital stock has not been subscribed, they shall take measures for obtaining subscriptions of the residue. They shall not, to obtain such subscriptions, sell the stock at less than par, unless specially authorized so to do, but may fix the price of such residue at a premium, which shall be for the benefit of all the stockholders ratably.

See § 1106, and cross-references.

§ 1125. Shares of stock shall be deemed personal estate, and as such shall pass to the personal representative or assignee of a stockholder. A book shall be kept by the company, in which the shares may be assigned.

See § 1068, subd. 4, and cross-references. Stock not assignable until paid for. § 1130. Issue of certificate, manner of transfer of stock, etc.

Directors to receive subscriptions; recovery — Code, §§ 1126, 1127.

§§ 1132-1135. Books to be exhibited to agent of members of assembly. § 1142. Stock, how transferred. § 1149, and note.

[Capital stock and shares of capital stock are distinct things; former belongs to the corporation, the latter to individuals. Both may be taxed, and it is not double taxation. *Commonwealth v. Charlottesville*, 90 Va. 790; s. c., 20 S. E. Rep. 364.

Contract to purchase stock, induced by fraudulent representations, is not void, but only voidable at purchaser's option. *Weisiger v. Ice Co.*, 90 Va. 795; s. c., 20 S. E. Rep. 361.

A bequest to a corporation of its own stock is valid. *Nav. Co. v. Dawson*, 3 Gratt. 19.

Upon a contract to deliver stock the damages for failure is the value of the stock at the time it ought to be delivered. *R. R. Co. v. Fulvey*, 17 Gratt. 366.]

§ 1126. Immediately after the election of president and directors, the money paid upon shares at the time of subscribing shall be paid by the commissioners, who have received the same, to such person or in such manner as the president and directors may require. In case of failure so to pay, the company may recover the same against such commissioners by warrant or by action, according to the amount, or by motion in lieu of an action.

See § 1107, and cross-references.

§ 1127. If the money which any stockholder has to pay upon his shares be not paid, as required by the president and directors, the same, with interest thereon, may be recovered by warrant, action, or motion as aforesaid, or such shares may, after notice in a newspaper for one month, of the time and place of sale, be sold at public auction for ready money, and transferred to the purchaser.

See § 1148, and Act 8.

[If the law authorizes a sale of the stock of delinquent subscribers, and if the sale shall not produce the sum due, then a motion against such subscribers for the deficiencies, and under this power, corporation exposes stock to sale, which is not sold for want of bidders; they may then maintain a motion against delinquent subscribers, under spirit of the law. *Grays v. Turnpike Co.*, 4 Rand. 578.

Books of corporation are proper evidence to prove its existence and the regularity of its proceedings. *Id.*

In a suit where corporation is party, decree binds stockholders, though they be not personal parties; and assessments made under decree therein, collectible by proceeding, may be sued for by him in his own name. *Vanderwerken v. Glenn*, 85 Va. 9; s. c., 6 S. E. Rep. 806.

Where defendant in an action for assessment had agreed to subscribe for stock of corporation under its then name; and his proxy participated in organizing company, and on his motion name was changed to that it bore at time of assessment; and defendant named thereon conveys book as a stockholder, held, evidence of membership personally conveyed is sufficient. *Id.*

Assignor of shares of stock is still liable for unpaid subscriptions, whether installments accrued before or after the assignment. *Hamilton v. Glenn*, 85 Va. 901; s. c., 9 S. E. Rep. 129.

Where trust executed by corporation provides that unpaid subscriptions shall be payable to

trustee, right to collect same passes, and creditors may enforce them by suit. *Id.*

Where corporation's property, including unpaid subscriptions, is conveyed to secure its debts, which, though barred by limitation, are not extinguished, equity will aid in enforcing their payment. *Id.*

Persons who have been induced by some fraudulent misrepresentations to subscribe to stock of a corporation have a common interest, and may join in suit for benefit of themselves and others similarly deceived, to cancel subscriptions. *Bosher v. Land Co.*, 89 Va. 455; s. c., 16 S. E. Rep. 360.

Where defendant signed a subscription to stock in a corporation, circulated with a prospectus making certain statements as to capital, purpose and location thereof; and later a second prospectus was circulated for signature, by which the capital, purpose and location were differently stated; and defendant refused to sign the second prospectus, held, defendant was not liable to plaintiff for stock he subscribed to under first prospectus. *Mfg. Co. v. Hockaday*, 89 Va. 557; s. c., 16 S. E. Rep. 877.

Change in purpose of corporation, as set forth in prospectus, will release subscriber thereto from liability, if made without his consent. *Id.*

When up to time of trial the proposed capital stock of corporation has not been fully subscribed, a subscriber thereto cannot be even liable for assessment on his subscription unless there is in the articles or in the general law under which corporation is formed a provision to the contrary. *Id.*

Where one is fraudulently induced by promoter of corporation to subscribe to its capital stock, held, he may repudiate contract at his discretion. *Land Co. v. Haupt*, 90 Va. 533; s. c., 19 S. E. Rep. 168.

In suits to collect assessments from subscriber, he may set up defense of failure of consideration, fraud, or any other matter which would entitle him to relief in equity, yet, those defenses are personal to him and do not pass to transferee of stock. *Lewis v. Land Co.*, 90 Va. 693; s. c., 19 S. E. Rep. 781.

The statute gives no lien to the company on the stock of a stockholder for any other debts they may have than that which is due for unpaid stock. *Ins. Co. v. Lumsden*, 75 Va. 327.

A simple contract creditor of an insolvent corporation may sue in equity to have the assets administered. *Nunnally v. Strause*, 26 S. E. Rep. 580.

Stockholders of a corporation are not proper parties to a bill by a creditor alleging insolvency of the corporation, and asking that its property be administered as a trust fund. *Bristo I. & S. Co. v. Thomas*, 25 S. E. Rep. 110.

An interlocutory decree in a creditor's suit against an insolvent company and its stockholders, which determines the right of plaintiffs as against the stockholders, is final as to such controversy, and beyond the power of legislation to alter or annul. *Martin v. So. Salem Land Co.*, 26 S. E. Rep. 591.

A subscription to the stock of a corporation may be enforced by a suit in equity by judgment creditors of the corporation. *Id.*

In a creditor's suit to subject the assets of a corporation including unpaid stock subscriptions, to the payments of judgments against it, all the stockholders are not indispensable parties. *Id.*

In determining the solvency of a corporation, unpaid stock subscriptions which the company itself has no right to enforce cannot be considered as assets. *Id.*

Stockholders cannot enforce an agreement with the corporation that they shall not be called on to pay more than a certain per cent. on their stock, as against creditors without notice. *Id.*

Stockholders who have paid only a per cent. of its par value cannot defend an action by judgment creditors to compel payment of the remainder on the ground that the amount paid was the full actual value of the stock. *Id.*

The incorporation of a company by a court cannot be denied by it, nor by its stockholders,

Sale to pay subscriptions; stock certificates — Code, §§ 1128-1135.

against its creditors after its charter has been filed for record with the secretary of the commonwealth. *Id.*

Stockholders induced to subscribe by fraudulent representations cannot rescind after two years and a half, and after the corporation has become insolvent. *Id.*

§ 1128. Out of the proceeds of such sale there shall be paid the charges, and the money which ought to have been paid upon the said shares, with interest thereon. Any surplus shall be paid to the delinquent or his representative.

[See *Ins. Co. v. Lumsden*, 75 Va. 327.]

§ 1129. If there be no sale for want of bidders, or if the sale shall not produce enough to pay the charges, and the money which ought to be paid with interest, the company may recover against such stockholder whatever may remain unpaid, with interest thereon, by warrant, action, or motion as aforesaid.

See § 1127.

§ 1130. No stock shall be assigned on the books without the consent of the company, until all the money which has become payable thereon has been paid; and on any assignment the assignee and assignor shall be severally liable for any installments which have accrued, or which may thereafter accrue, and may be proceeded against in the manner before provided.

See § 1125. Stock, how transferred. § 1133.

[See *Ins. Co. v. Lumsden*, 75 Va. 327; *R. R. Co. v. Griffith*, 76 *Id.* 913.]

§ 1131. A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof, as it regards the company.

See § 1116.

[Stockholders of a corporation having directed directors to create new stock and sell it; and directors having, instead, acquired original stock and sold it, their act may be ratified subsequently by the stockholders, so as to render the sales valid and binding upon the purchasers. *Crump v. Mining Co.*, 7 *Gratt.* 352.]

Although a stockholder of corporation may enjoin it from employing property or powers of corporation in a way wholly or materially different from that which was designed by act of incorporation, yet such stockholder has no right to enjoin it from doing what is in direct furtherance of the object of its creation, and for benefit of all stockholders, though it may be injurious to such stockholder in another character; or interest of some other person or the public may be injuriously affected by act about to be done. *R. R. Co. v. City*, 13 *Gratt.* 40.

Shares of stock are liable to attachment. *R. R. Co. v. Paine*, 29 *Gratt.* 502.]

§ 1132. The president and directors shall issue to each person appearing on the books

of the company as owner of any shares of stock fully paid, a certificate for such shares under the seal of the company, signed by the president, and countersigned by the secretary, treasurer, or cashier.

See § 1125. New certificate to be issued, when.

§ 1134. Same, when former certificate lost. § 1135.

§ 1133. If any such person shall, for valuable consideration, sell, pledge, or otherwise dispose of any of his shares of stock to another, and deliver to him the certificate for such shares, with power of attorney authorizing the transfer of the same on the books, the title of the former (both at law and in equity) shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provision of section eleven hundred and thirty.

See *Const.*, art. X, § 14.

§ 1134. The person to whom any such certificate is issued may return the same to the office of the company, and, in person, or by an attorney acting under a power from him, assign on the books of the company either the whole number of shares mentioned in such certificate, or a less number. The certificate so returned shall be canceled and filed in the company's office. And thereupon so many new certificates shall be issued, and to such person or persons as may be proper in the case.

See § 1125. Certificates to be issued, when. § 1132, and cross-references.

§ 1135. (As amended January 9, 1896; *Laws* 1895-6, chap. 34.) When a person to whom such a certificate is issued or to whom same has been duly assigned, alleges it to have been lost, he shall file in the office of the company, first, an affidavit setting forth the time, place and circumstances of the loss; second, proof of his having advertised the same in a newspaper once a week for one month; and third, a bond to the company, with one or more sufficient sureties, with condition to indemnify all persons against any loss in consequence of issuing a new certificate in place of the former, and thereupon, the board shall direct such new certificate, and the same shall be issued accordingly. But if such certificate is alleged to have been lost for a period of seven years or more, any person claiming title to the shares of stock represented by such certificate may file a petition in the circuit or corporation court of the county or city wherein the principal office of the company is, or before the judge thereof in vacation,

Dividends; corporate rights to cease — Code, §§ 1136-1141.

briefly setting forth the facts upon which the claimant relies to sustain his title thereto, a copy of which petition shall be served on the company, in like manner as notices are served, at least two weeks before the petition is heard; and, if such shares of stock stand on the books of the company in the name of some person other than the claimant, a copy of the petition shall likewise and in like manner be served on such other person, or his personal representative, and notice of the claimant's intention to file his petition shall be published in some newspaper at least once a week for two successive weeks. On the hearing of the petition the court or judge shall consider such evidence as may be adduced by any party in interest, whether the same be in the nature of oral testimony, paper, writing, depositions or otherwise; and if the court or judge shall be satisfied that the petitioner is entitled to the shares of stock which he claims, then an order shall be entered on the minute-book of the court requiring the issuance of a new certificate for the same, without the execution of any bond, by way of indemnity or otherwise. And when the new certificate shall have been issued and delivered under an order of court as herein provided, the company shall forever be discharged and relieved from any and all liability to any and all persons who may subsequently claim an interest in the stock of the company under or by virtue of the former certificate.

Certificate to be issued, when. § 1132, and cross-references.

§ 1136. The board shall semi-annually declare dividends of so much of the net profits of the company as it may deem prudent to divide. If any stockholder be indebted to the company, his dividend, or so much as may be necessary, shall be passed to his credit in payment of the debt.

Members of board liable, if dividend declared of capital. § 1138. When such dividend may be made. § 1139.

§ 1137. The president and directors of every company, to the stock of which a subscription has been made on behalf of the state, shall, upon declaring any dividend of the profits of such company, cause information thereof to be given to the second auditor. And when the proportions of the private stockholders of such dividend are payable, the proportion of the State shall be paid into the public treasury to the credit of the fund for internal improvement. If sixty days elapse after the time for payment into the treasury without such payment be made, the company shall forfeit a sum not exceeding one hundred dollars.

See Const., art. X, § 14. Notice of dividends. § 1140.

§ 1138. If the board declare a dividend of any part of the capital stock of the company, all the members of the board who shall be present, and not dissent therefrom, shall, in their individual capacity, be jointly and severally liable to the company's creditors for the amount of capital so divided, and may be decreed against therefor, on a bill in equity filed on behalf of such creditors; and moreover, each stockholder who participates in such dividend shall be liable to such creditors to the extent of the capital stock so received by him.

See § 1136, and cross-references.

§ 1139. The stockholders, in general meeting of any company, incorporated for manufacturing or mining, and out of debt, may order dividends of capital stock. But before such dividend is made, notice of the order shall be posted at the front door of the courthouse of the county or corporation wherein the general meeting was held, on the first day of three successive courts, or published for three successive months in a newspaper circulating in the neighborhood.

See § 1136, and cross-references.

[One selling stock, reserving the dividend, held entitled to the cash, but not to the stock dividend. *Kahman v. Charlottesville Mills*, 25 S. E. Rep. 1003.]

§ 1140. Of every dividend declared, and of the time and place appointed for the payment thereof, the board shall cause notice to be published in some newspaper printed in the city of Richmond, or in or near to the city, town, or place in which the principal office of the company is situated. Once in every five years they shall publish in such newspaper a list of all dividends which have remained unpaid for two years or more, with the names of the persons to whose credit such dividends stand. Every such notice or list shall be published in three successive issues of such paper.

See § 1137.

[Where directors fail to declare dividends at stated times, as directed by charter, it is not in their power to declare dividends to extend back over periods of which they had failed to declare them. *Gordon v. R. R. Co.*, 78 Va. 501.]

§ 1141. And if any such company (incorporated by the general assembly), be not organized by the appointment of a president and directors, within two years from the passage of its act of incorporation, or though so organized, if it shall suspend its operations for two years, its corporate rights and privileges shall, in each of these cases, cease.

Writ of quo warranto to be awarded, when. § 3022.

Limitation of charters; grant of charters by court — Code, §§ 1142-1145.

§ 1142. Every such company for manufacturing or mining whether incorporated by the general assembly or a court, shall exhibit its books, and a statement of its property and condition, to such agent or agents as the general assembly may from time to time appoint to examine the same.

Account books to be kept. § 1121. Books of subscription to be delivered to directors. § 1124. Transfer book. § 1125.

§ 1143. The act of incorporation of every such company for manufacturing or mining shall be in force for thirty years from the passage thereof, and no longer, and may, at any time after fifteen years from the organization of the company, be amended or repealed, at the pleasure of the general assembly. Any such act of incorporation heretofore passed, which the general assembly now has or may hereafter have power to amend, shall be deemed to be amended by this chapter now or whenever such power shall exist.

See § 1068, subd. 1. Certain charters liable to amendment, when. § 1069. How charters amended by circuit courts. § 1145.

[Bill against public company incorporated for a limited time, dismissed by court of chancery, and plaintiff appeals from decree; pending the appeal, charter of company expires by efflux of time; appeal must abate. *Rider v. Factory*, 7 Leigh, 154.

If during pendency of appeal by corporation, its charter expires and it be suggested that during existence of corporation it made an assignment of its rights in subject in controversy, fact of existence of such assignment may be inquired into by appellate court, and being satisfied of fact, may permit case to proceed, without noticing on record the dissolution of corporation. *Bank v. Patton*, 1 Rob. 499; *May v. Bank*, 2 id. 56.

If after judgment has been obtained by a corporation its charter expires, no execution on such judgment can be sued out in name of corporation; if an original judgment be rendered in favor of a corporation, as it could not be regularly rendered unless existence of corporation was continued, the necessary indentment from rendition of it is, that continuance was either proved or admitted; and execution being sued out, defendant is by his indentment estopped to deny existence of corporation at time of judgment. *Id.*

A corporation is not exempted from a provision of the law under which it is incorporated, limiting the life of all corporations formed thereunder, because such provision is not embodied in its charter. *Supreme Lodge, etc. v. Weller*, 25 S. E. Rep. 891.

A corporation organized under a law limiting its duration ceases to exist or to have power to do any corporate act at the expiration of such term. *Id.*

§ 1144. The provisions of section eleven hundred and seven shall extend and apply to any company for manufacturing or mining which has been incorporated by the general assembly since the act passed on the thirteenth day of February, eighteen hundred and thirty-seven, prescribing general regulations for the incorporation of manu-

facturing or mining companies, or which may hereafter be incorporated by the general assembly.

See § 1145.

§ 1145. (As amended February 20, 1892.) Any five or more persons, who shall desire to form a joint-stock company for the conduct of any enterprise or business, which may be lawfully conducted by an individual or by a body politic or corporate, except to construct a turnpike, to be constructed beyond the limits of the county, or a railroad, or canal, or to establish a bank of circulation, may make, sign, and acknowledge before any justice or notary, or county or corporation judge, or clerk of a county, corporation or circuit court, a certificate in writing setting forth the name of the company, the purposes for which it was formed, the capital stock and its division into shares, the amount of real estate proposed to be held by it, the place at which its principal office is to be kept, the chief business to be transacted, and the names and residences of the officers who for the first year are to manage the affairs of the company. This certificate may be presented to the circuit court of the county, or the circuit or corporation court of the corporation, wherein the principal office of the company is to be located, or to the judge thereof in vacation. The said court or judge in vacation shall have a discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate, or grant it upon such other terms as may be adjudged reasonable. If the charter be granted, it shall be recorded by the clerk of the said court in a book to be furnished and kept for the purpose, and shall be certified by him to the secretary of the commonwealth, to be in like manner recorded in his office. Any charter heretofore or hereafter granted to a company under the provisions of this section by a court or judge thereof in vacation may be altered or amended, or the corporate name of the company be changed, by the said court or the judge in vacation on the application of the company, authorized by a majority of the stockholders in general meeting. And any charter heretofore or hereafter granted by the general assembly which, under the provisions of this section, might have been granted by a court or judge, may in like manner, and on like application, be altered or amended, or the corporate name of the company changed by the circuit court of the county, or circuit or corporation court of the corporation wherein the principal office of the company is, or by the judge of such court in vacation; such alteration or amendment or change shall be recorded by said clerk and in the office of the secretary of the commonwealth, as hereinbefore provided for record-

ing charters, and shall be as effectual and legal from that time as if originally a part of said charter. Any charter heretofore granted by a circuit or corporation court to build and operate a street railroad, shall be deemed valid to all intents and purposes; but said courts are hereby inhibited and forbidden to hereafter grant any charters to build and operate street railroads. But nothing contained in this section shall be held or construed as denying to any building fund association, which has heretofore been organized and incorporated under the act of May twenty-ninth, eighteen hundred and fifty-two, and amendatory acts, all the rights, powers, privileges, and franchises granted to and vested in such associations under said acts. And it shall not be lawful for the general assembly to grant relief or to incorporate any company, or to alter or amend the charter of any corporation, provision for which is made in this section, unless application shall have been first made to some circuit or corporation court, or the judge thereof in vacation, and refused: Provided, That nothing in this act shall be construed to authorize the condemnation of lands by any street railroad company chartered by the courts.

See Const., Schedule. Amendment of charters. § 1069, and cross-references. Every corporation to keep an office in this State. § 1101. Failure to comply with such requirement. § 1105. Real estate may be held, etc. § 1068, subd. 4. Directors, how appointed. § 1118. Act of incorporation effective, when. § 1146. Corporate rights to cease, when. § 1141. Limitation of charters. § 1143. Capital stock minimum and maximum. § 1148. Quo warranto awarded, when. § 3022. Fees of secretary of commonwealth. § 1151. Stockholder may take acknowledgment. Act of 1892, at p. 29. Fees for filing charter. Act of 1897, at pp. 30-32.

[The word "person" includes corporations, when. *R. R. Co. v. Gallahue*, 12 Gratt. 655; *Miller v. Commonwealth*, 27 id. 119; *Tel. Co. v. City*, 26 id. 1.

Persons dealing with corporations must take notice of what is contained in law of their organization and they must be presumed to be informed as to the restrictions annexed to the grant of power by the law by which corporation is authorized to act. *Silliman v. R. R. Co.*, 27 Gratt. 119.]

§ 1146. As soon as the charter has been lodged in the office of the secretary of the commonwealth, the persons who signed and acknowledged said certificate, and their successors, and such other persons as may be associated with them according to the provisions of their charter, shall be a body politic and corporate, by the name set forth in the said certificate, and shall have all the general powers and be subject to all general restrictions conferred and imposed, and be governed by the provisions of this chapter and the forty-sixth chapter, so far as they are applicable and not inconsistent

with such charter, and be subject to all future laws which may be passed to alter or amend the same; the general assembly reserving the right to repeal, alter, or modify at its pleasure, any charter heretofore or hereafter granted under this and the preceding section: Provided, however, That nothing contained in this and the preceding section shall be construed to invest any corporation chartered thereunder with the right or power to have land or any other thing condemned for its use or benefit under the provisions of chapter forty-six or any other chapter of this Code.

See § 1145, and cross-references.

[The incorporation of a company by a court cannot be denied by it, nor by its stockholders, against its creditors after its charter has been filed for record with the secretary of the commonwealth. *Martin v. S. Salem Land Co.*, 26 S. E. Rep. 591.]

§ 1147. The officers and directors of any such company, after the first year, shall be such as may be prescribed by its by-laws, and shall be appointed or removed as the said by-laws may provide.

President and directors, how appointed. § 1118. Capital not exceeding \$10,000, number of directors Act 7.

[Directors of corporation are its officers or agents, and represent its interests and the interests of those who own shares of stock. *Addison v. Lewis*, 75 Va. 701.

Corporation may make contracts with stockholders as well as with others. *Id.*

Directors are bound to discharge their duties prudently, diligently and faithfully, and apply assets in case of insolvency for benefit of creditor in preference to stockholders and other persons. *Bank v. Whittle*, 78 Va. 737.

They are not technically trustees nor bound to apply assets ratably among general creditors. *Id.* They can only make preference between creditors, but such preference may be made in their own favor if they be creditors; but in such cases they must act with utmost good faith. *Id.* Until appointment of a receiver and the award of injunction, the management of the affairs of company remain in the hands of directors, and assignment by them in payment of company debts may be lawfully made. *Id.*

A corporation is not chargeable with notice of a fact because known to a director, when he represents the other part in the transaction, and is adversely interested. *Martin v. S. Salem Land Co.*, 26 S. E. Rep. 591.]

§ 1148. (As amended February 17, 1890.) The minimum capital of every such company (except a cemetery company, or a company whose object is purely benevolent, which may have only a nominal capital,) shall not be less than five hundred dollars, nor shall the maximum exceed twenty times the minimum capital, and the same proportion shall be preserved for greater sums. Subscriptions to the stock may be paid in money, land or other property (real, personal or mixed), leases, options, mines, minerals, and mineral rights, rights of way, and other rights or easements, labor or ser-

Stock; preferences; certificate to be filed; annual reports — Code, §§ 1149-1153.

vice, and there shall be no individual liability beyond the unpaid subscriptions to stock. And it shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as it shall deem proper, and may enforce payment by all the remedies provided by law in respect to other incorporated companies. Each certificate of stock in any such company shall set forth truly the actual capital of the company, the nominal value of each share of the stock, and the amount actually paid on each share by the holder of such certificate. In every meeting of the stockholders of any such company, each stockholder shall be entitled to cast one vote for each share of stock held by him in said company.

See § 1107, and cross-references. Votes each stockholder is entitled to. § 1116. How subscriptions may be recovered. § 1127, and Act 8. Charter to contain amount of capital. § 1145. Subscriptions may be made in land to certain corporations. § 1108.

§ 1149. The stock of every such company shall be deemed personal estate, and be transferable in such manner as shall be prescribed by the by-laws of the company; and if any such company create any lien or incumbrance on its works or property for the purpose of giving a preference to one or more creditors of the company over any other creditor or creditors, except to secure a debt contracted, or money borrowed at the time of the creation of the lien or incumbrance, the same shall inure to the benefit ratably of all the creditors of the company existing at the time such lien or incumbrance was created.

See § 1125, note, and cross-references.

[Where stock of corporation is declared to be personal estate, and certificates are made transferable on books of corporation, and it is authorized to acquire real estate, such estate is vested in it as a corporation and not in individual shareholders. Certificates of stock is evidence of right of owner to his proportion of profits or dividends, and, on expiration of charter, to his proportion of assets remaining after payment of debts; and every purchaser of stock takes it subject to the same liability. *Barksdale v. Finney*, 14 Gratt. 338.

Above section does not prohibit the assignment of estates at their face value in discharge of the company's indebtedness, no lien thereby being created. *Bank v. Whittle*, 78 Va. 737.

Stockholders are individually liable for company debts to extent of their stock. Where stockholder pays corporate debt and takes the assignment thereof to himself, he cannot revive that debt by assigning it to a third party. *Hardy v. Mfg. Co.*, 80 Va. 404.]

§ 1150. A copy of the certificate filed with the secretary of the commonwealth, certified by him under the seal of the State, shall be received as legal evidence of the incorporation of such company. A list of all

companies so incorporated shall be reported by the secretary of the commonwealth to the general assembly at each regular session.

See § 1068, subd. 2. Proof of incorporation. § 3280. List of such companies will be found in the acts of assembly of each year.

[Organization of corporation may be proved by its records and parol proof, without the production of its list of subscribers. *Crump v. Mining Co.*, 7 Gratt. 352.]

§ 1151. The clerk of the court in which any charter is granted under sections eleven hundred and forty-five and eleven hundred and forty-six, and the secretary of the commonwealth, shall each be entitled to receive from the persons constituting any such company, at the time of performing the services, for filing the papers, and for all entries or records made in relation thereto, or copies thereof, double the fees provided by law for similar services in regard to deeds in any of the courts of this commonwealth.

See § 1145, and cross-references. Franchise fee provided for. Act of 1890, at p. 28.

§ 1152. All annual reports of companies, boards, or other institutions now required by law to be made to the governor, or to the board of public works, or to the board of education, shall be made on or before the first day of October in each year.

See § 1123. Penalty for failure. § 1153.

§ 1153. If any company, board, or other institution as aforesaid shall have failed to comply with the preceding section, on the fifteenth day after the said first day of October, it shall be the duty of the officer or board to whom the said report should have been made, or of the secretary of such board, if the same be not in session, to report such failure immediately to the attorney-general; and it shall be his duty, after giving to the said company, board, or other institution ten days' notice, to proceed against the same for such failure, by motion in the circuit court of the city of Richmond. Such court shall consider said cases privileged cases, and it shall be its duty to enter up a judgment for a fine of one hundred dollars in each case, and for the costs in addition thereto, including a fee of twenty dollars for the services of said attorney-general. Execution shall be awarded against the officers or managers of said company, board or other institution, to be levied as other executions are levied, upon the individual property of all or either of them. And the said officers or managers shall not be exonerated from the payment of the said fine and costs, unless upon satisfactory proof to said court that the reports re-

quired to be made by said company or institution were duly mailed, transmitted, or delivered to the proper officer on or before the day required.

TITLE XXX. VENDOR'S LIEN; LIEN OF MECHANICS AND OTHERS.

CHAPTER CX.

Of the Lien of Mechanics and Others.

Sec. 2485. Lien of employes of corporations on its franchises and property.
2486. Lien, how perfected and enforced.

§ 2485. (As amended February 15, 1892.) All conductors, brakemen, engine-drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, store-keepers, mechanics or laborers and all persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal, or other transportation company, and all clerks, mechanics and laborers who furnish their services or labor to any mining or manufacturing company, whether such railway, canal, or other transportation, or mining or manufacturing company be chartered under or by the laws of this State or be chartered elsewhere and be doing business within the limits of this State, shall have a prior lien on the franchises, gross earnings, and on all the real and personal property of said company, which is used in operating the same, to the extent of the moneys due them by said company, for such wages or supplies; and no mortgage, deed of trust, sale, hypothecation, or conveyance, executed since the twenty-first day of March, eighteen hundred and seventy-seven, shall defeat or take precedence over said lien; and all persons furnishing supplies to a mining or manufacturing company, necessary to the operation of the same, shall have a prior lien upon the personal property of such company other than that forming part of its plant to the extent of the money due them for such supplies, and also a lien upon all the estate, real and personal, of such company, which said last lien, however, upon all such real and personal estate, shall be subject and inferior to any lien by deed of trust or mortgage, hypothecation, sale, or conveyance, made or executed and duly admitted to record, prior to the date at which said supplies are furnished; Provided, however, That the lien secured by this provision to parties furnishing supplies, shall be subsequent to that due to clerks, mechanics and laborers for services furnished as aforesaid: And provided, That if any person entitled to a lien as well under section twenty-four hundred and seventy-five as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other: And provided, also, That no right to

or remedy upon a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby.

See Act of 1892, at p. 29.

§ 2486. (As amended February 15, 1892; February 12, 1896.) No person shall be entitled to the lien given by the preceding section unless he shall, within ninety days after the last item of his bill becomes due and payable for which such supplies are furnished or service rendered, file in the clerk's office of the court of the county or corporation in which is located the chief office in this State of the company against which the claim is, or in the clerk's office of the chancery court of the city of Richmond, when such office is in said city, a memorandum of the amount and consideration of his claim, verified by affidavit, which memorandum the said clerk shall forthwith record in the deed book, and index the same in the name of the said claimant and also in the name of the company against which the claim is. Any such lien may be enforced in a court of equity.

[Above section is constitutional. Development Co. v. Iron Co., 90 Va. 126; s. c., 17 S. E. Rep. 806.]

TITLE XXXVI. FIDUCIARIES GENERALLY.

CHAPTER CXXI.

Of the Settlement of Accounts of Fiduciaries and Payment of what They Owe.

Sec. 2709. How trustee or receiver of resident joint-stock company may compromise claims due to it; liability of other persons on contracts so compromised not thereby impaired; effect of compromise on right of contribution.

§ 2709. * * * In any suit now pending or hereafter brought in a court of equity of competent jurisdiction, against a joint-stock company chartered by the laws of this State, for the purpose of obtaining payment of its debts and administering its assets, any trustee or mortgagee of such company charged with the duty of collecting its assets, or any receiver appointed therefor, may, with the sanction of such court, compound and compromise any claim or demand on the part of such company, of whatever nature or character, against any person or persons whatever, and may compound and compromise any and all questions touching such demand or claim, with power in such fiduciary to take any needful security and to give complete discharges in respect of any liability to such company; but such compounding and compromise shall not be valid, unless and until there shall be had and filed, in said court, the consent in writing of a majority in number and value of the credit-

Interest by corporations; attachments — Code, §§ 2820, 2825, 2826, 2841, 2959.

ors of such company, whose claims, under a general order of court for proof of debts, have been reported by a commissioner and approved by the court. Any compounding and compromise made under this section with any person claimed to be indebted or liable to such company shall not be held to impair the liability of any other person arising out of the same contract, except that, when the contract or liability is joint, the amount received shall be credited in full of the share of the party released. Nothing herein contained shall affect the right of indemnity or of contribution among the parties.

See § 106S, subd. 2, and cross-references.

TITLE XXXIX. MONEY AND INTEREST.

CHAPTER CXXX.

Of Money and Interest.

Sec. 2820. Rate of interest allowed to corporations.

2825. Corporations not allowed to plead usury.

2826. Nor to charge more than legal interest unless expressly authorized.

§ 2820. Any licensed banker or broker, and any corporation authorized by law to make loans or to purchase or discount bonds, bills, notes, or other paper, may loan money, or discount bonds, bills, notes, or other paper, at a rate of interest not exceeding one-half of one per cent. for thirty days, and may receive such interest in advance.

§ 2825. No corporation shall, by way of defense or otherwise, avail itself of any of the provisions of the preceding sections of this chapter, to avoid or defeat the payment of any interest which it has contracted to pay; nor shall anything contained in any of said sections be construed to prevent the recovery of such interest, though it be more than legal interest, and though that fact appear on the face of the contract.

See § 106S, subd. 2, and cross-references.

[Above section is retroactive in its operation, and applies to contracts made by corporation before its passage; and this, though suit has been brought upon such contract before its passage. The act is not in violation of Constitution of United States or of Virginia. *Town v. Pace*, 25 Gratt. 1.

In an action on a usurious contract, the judgment is to be for the principal sum ascertained to be due after deducting the usury and interest on that principal from debt on judgment. *King v. Buck*, 30 Gratt. 828. Where an instrument is on its face usurious, judgment shall be for the principal sum only, although defendant may have filed no plea of usury. *Turner v. Turner*, 80 Va. 379.]

§ 2826. Nothing in the act of incorporation of any insurance, banking, or other corporation, shall be construed as giving authority (unless expressly given), to charge, take, or receive, for the loan or forbearance of money or other thing, more than the legal rate of interest.

TITLE XL. CONTRACTS.

CHAPTER CXXXIII.

Of Seals.

Sec. 2841. Impression on paper as valid as on wax.

§ 2841. * * * The impression of a corporate or an official seal on paper or parchment alone shall be as valid as if made on wax or other adhesive substance.

See § 5, and cross-references.

TITLE XLIII. WARRANTS, ATTACHMENTS AND BAIL.

CHAPTER CXLI.

Of Attachments.

Sec. 2959. Ground of attachment.

2964. Attachment in equity; when it may not be issued against a corporation.

§ 2959. (As amended February 20, 1892.) If at the time of, or after the institution of any action at law for the recovery of specific personal property, or a debt, or damages for the breach of a contract, express or implied, or damages for a wrong, the plaintiff, his agent or attorney, shall make affidavit, stating that the plaintiff's claim is believed to be just, and where the action is to recover specific personal property, the nature and, according to the affiant's belief, the value of such property, and the probable amount of damages the plaintiff will recover for the detention thereof, and where it is to recover a debt or damages for the breach of a contract, express or implied, or damages for a wrong, a certain sum which (at the least) the affiant believes the plaintiff is entitled to or ought to recover, and stating also the existence, to the best of the affiant's belief, of one or more of the following grounds for attachment: that the defendant, or one of the defendants —

First. Is a foreign corporation, or is not a resident of this State, and has estate or debts owing to said defendant within the county or corporation in which the action is, or is sued with a defendant residing therein, or that the defendant, being a non-resident of this State, is entitled to the benefit of any lien, legal or equitable, on property, real or personal, within the county or corporation in which the action is, and the word estate as herein used, shall include all rights or interests of a pecuniary nature which can be protected, enforced, or proceeded against in courts of law or equity; but this provision as to equitable estates and interests so far as amendatory of existing laws shall not apply to attachment sued out before the passage of this act. This section, as so enlarged, shall come under the provis-

ions of section twenty-nine hundred and sixty-four, concerning attachments in equity:

* * * * *

See § 1068, subd. 2, and cross-references.

[A creditor of a corporation created by another State may maintain a suit against such corporation as an absent defendant, where there are persons in the commonwealth, having the effects of, or being indebted to, such corporation, or where it has lands or tenements within the commonwealth. *Bank v. Merchants' Bank*, 1 Rob. 573.]

§ 2964. When a person has a claim, legal or equitable, to any specific personal property, or a like claim to any debt, whether such debt be payable or not, or to damages for the breach of any contract, express or implied, if such claim exceed twenty dollars, exclusive of interest, he may, on a bill in equity filed for the purpose, have an attachment to secure and enforce the claim, on affidavit made by himself, his agent or attorney, according to the nature of the case, conforming as nearly as its nature will admit, to the affidavit required by section twenty-nine hundred and fifty-nine; except that if the claim be to a debt not payable, the affidavit shall also state the time when it will be payable. Upon such affidavit, the plaintiff may require the clerk to indorse on a summons an order to the officer to whom it is directed to attach the specific property (if any be mentioned in the affidavit), and the debts owing by other defendants (if any) to the defendant against whom the claim is, and also any other estate of that defendant, whether in his own hands or in the hands of other defendants. Any attachment under this section shall be executed in the same manner, and shall have the same effect as at law, but the proceedings therein shall be the same as in other suits in equity. And the court, or the judge thereof in vacation, may interpose by injunction, or the appointment of a receiver or otherwise, to secure the forthcoming of the specific property sued for, and so much other estate as will probably be required to satisfy any future order or decree that may be made in the cause. This section shall not be construed as giving to a court of equity jurisdiction to enforce by attachment a claim to a debt not payable, where the only ground for the attachment is that the defendant, or one of the defendants, against whom the claim is, is a foreign corporation, or is not a resident of this State, and has estate or debts owing to the said defendant within the county or corporation in which the suit is, or is sued with a defendant residing therein.

See § 1068, subd. 2, and cross-references.

[Corporation may be summoned and proceeded against as a garnishee. *R. R. Co. v. Gallabue*, 12 Gratt. 655.

Where corporation is proceeded against as a garnishee, its answer is to be received in the only mode in which the corporation can answer, under its corporate seal. *Id.*

Negligence of an officer, in allowing a judgment to be rendered against his corporation as garnishee when debt had been previously assigned to another party, and notice thereof had been given to another officer, will exclude corporation from relief in equity against judgment. *Richmond Co. v. Robinson*, 24 Gratt. 548.

Shares of stock are liable to attachment, and the corporation may be summoned as garnishee. *R. R. Co. v. Paine*, 29 Gratt. 502.

Courts of equity and of law have jurisdiction. *Id.*

TITLE XLV. QUO WARRANTO, MANDAMUS, ETC.

CHAPTER CXLV.

Of the Writ of Quo Warranto and Information in the Nature of a Writ of Quo Warranto.

Sec. 3022. In what cases writ of quo warranto awarded.

3023. When, where, how and by whom the writ to be applied for.

3024. When awarded; when returnable; how signed and attested; when bond required.

3025. When, where, how, and by whom leave may be asked to file information in nature of writ of quo warranto; when leave granted and summons issued.

3026. How writ of summons directed and served.

3027. Trial of writ or information; how defense made; what to be taken as true; when case reheard.

3028. Verdict; judgment; costs; attorney's fee.

§ 3022. A writ of quo warranto may be awarded and prosecuted in the name of the State of Virginia, in any of the following cases, to wit:

First. Against a corporation (other than a municipal corporation) for a misuse or non-use of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a charter of incorporation has been obtained by it from a court for a fraudulent purpose, or for a purpose not authorized by law;

* * * * *

Third. Against any person acting as a corporation (other than a municipal corporation) without authority of law; * * *

All writs to continue. Const., Schedule. See § 1068, subd. 2, and cross-references. Corporate rights to cease, when. § 1141. Charters, how granted. § 1145. Jurisdiction of circuit courts in quo warranto. § 3058. Same of chancery. § 3080. Jurisdiction of quo warranto to be where. § 3217.

[Corporation being defendant in a suit in equity, which seeks to have it declared null, the holders of stock in it are not proper parties in it to defend the suit. *R. R. Co. v. R. R. Co.*, 19 Gratt. 592.

Holders of stock, claiming that if corporation is annulled, they have equitable interests in the property, may be admitted as parties defendants to protect their interests. *Id.*

A question whether a corporation has forfeited its charter is not open to collateral inquiry, when. *Crump v. Mining Co.*, 7 Gratt. 352.

Cause of forfeiture of charter cannot be taken advantage of collaterally or incidentally, but must be enforced only in a court of law by a direct proceeding against corporation. *Pixley v. Nav. Co.*, 75 Va. 320.

Charter is not a contract between corporate body on one hand and individuals whose rights and interests may be affected by exercise of its powers on the other; but it is a compact between the corporation and the government by which it derives its powers. *Id.*]

§ 3023. Whenever the attorney-general or attorney for the commonwealth of any county or corporation, the circuit or corporation court whereof has jurisdiction of the proceeding, is satisfied that a cause for the writ exists, he may, at his own instance, or at the relation of any person interested, apply by petition to the said circuit or corporation court or to the judge thereof in vacation, to have such writ issued, and shall state the reasons therefor in the petition. If the attorney-general or the attorney for the commonwealth, upon being requested as aforesaid, refuse or fail to apply for the writ, the person so interested may present his petition to such court or judge asking for the same.

§ 3024. If, in the opinion of the court or judge, the reasons so stated in the petition are sufficient in law, the said writ shall be awarded by the court or judge, returnable to the next term of the court, and the same shall be signed by the judge and attested by the clerk of such court. But if the writ be awarded at the relation of any person, it shall not be issued until the relator shall have given bond with sufficient surety (if such bond be required by the court or judge), to be approved by the clerk, in such penalty as the court or judge shall prescribe with condition that the relator shall pay all costs and expenses as may be incurred by the State in the prosecution of the writ, in case the same shall not be recovered from and paid by the defendant therein.

§ 3025. In any case in which a writ of quo warranto would lie, the attorney-general or attorney for the commonwealth of the county or corporation, the circuit or corporation court whereof has jurisdiction of the proceeding, at his own instance, or at the relation of any person interested, or any person interested may, in the name of the State of Virginia, apply to the said circuit or corporation court, or to the judge thereof in vacation, for leave to file an information in the nature of a writ of quo warranto for any of the causes and against any corporation, officer or person mentioned in section three thousand and twenty-two, and he shall, at the time of the application, present to the court or judge the information he proposes to file. If, in the opinion of the court or judge, the matters stated in the information are sufficient in law to authorize the

same to be filed, an order shall be made directing it to be filed, and awarding a summons against the defendant named therein to answer the same, returnable as provided in the preceding section. But if the leave to file the information be asked on the relation of any person, or by any person at his own instance, the summons thereon shall not be issued by the clerk until such relator or person shall have given bond with surety (if such bond be required by the court or judge), as provided by the said section.

§ 3026. Every such writ or summons may be directed to the sheriff of any county or the sergeant of any corporation, and shall be served as a notice is served under sections thirty-two hundred and seven and thirty-two hundred and eight; unless it be against a corporation, in which case it shall be served as provided in section thirty-two hundred and twenty-five.

See § 106S, subd. 2, and cross-references.

§ 3027. If the defendant named in such writ of information fail to appear after the service of the writ or summons, the court may hear proof of the allegations of the petition or information, and, if the allegations be sustained, shall give judgment accordingly. But if the service be made by publication, the defendant against whom the judgment is rendered, may, at the next term of the court, on petition filed for the purpose and upon giving bond with good security, in a penalty to be prescribed by the court, with condition to pay all such costs as shall be awarded in the cause against such defendant, have the said judgment set aside, and make such defense to the petition or information as such defendant might have made, and in the same manner, before the judgment was rendered. If the defendant appear before the end of the term next after the service of the writ or summons, or thereafter before judgment is rendered against such defendant, such defendant may demur or plead "not guilty," or both, to such writ, or demur or answer in writing, or both, to such information; and every allegation contained in the information which is not denied by the answer shall be taken as true, and no proof thereof shall be required.

§ 3028. If, on the trial of the writ or information, the defendant be found guilty, or not guilty, of any of the charges therein, the verdict shall be "guilty," or "not guilty," as the case may be; but if the defendant be found guilty as to a part only of such charges, the verdict shall be "guilty" as to such part, and shall particularly specify the same, and, as to the residue of said charges, the verdict shall be "not guilty." Against the defendant so found guilty the court shall give such judgment as is appropriate and authorized by law, and for the

Actions; jurisdiction; where commenced — Code, §§ 3058, 3080, 3214-3217.

costs incurred in the prosecution of the writ or information, including an attorney's fee, of not less than ten nor more than fifty dollars, to be fixed by the court.

TITLE XLVI. COURTS AND JURIES IN CIVIL CASES.

CHAPTER CXLVIII.

Of the Circuit Courts.

Sec. 3058. Jurisdiction of circuit courts in quo warranto.

§ 3058. The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature of quo warranto.
* * *

See § 1068, subd. 2, and cross-references. Quo warranto proceedings. §§ 3022-3028.

CHAPTER CXLIX.

Courts of the City of Richmond.

Sec. 3080. Jurisdiction of chancery and hustings courts of quo warranto, etc.

§ 3080. The said chancery court and the said hustings court, and the judges thereof respectively, shall have the same power as a circuit court or circuit judge to admit to bail and award injunctions, and the same jurisdiction of proceedings by writ of habeas corpus, writ of quo warranto or information in the nature of a writ of quo warranto, writ of mandamus, and writ of prohibition.

See § 1068, subd. 2, and cross-references. Proceedings in quo warranto. §§ 3022-3028.

TITLE XLVIII. PROCEEDINGS IN CIVIL CASES.

Ch. 157. Of the county or corporation, and court, in which proceedings are commenced.
158. Of process, and the order of publication.
159. Of the rules, pleadings generally, and judgments in the office.

CHAPTER CLVII.

Of the County or Corporation, and Court, in which Proceedings are Commenced.

Sec. 3214. The county or corporation in which actions or suits may be brought.

3215. Same.

3216. Same.

3217. Jurisdiction of writ of quo warranto.

§ 3214. Any action at law, or suit in equity, except where it is otherwise specially provided, may be brought in any county or corporation:

1. Wherein any of the defendants may reside;

2. If a corporation be a defendant, wherein its principal office is, or wherein its mayor, rector, president, or other chief officer resides;

3. If it be to recover a loss under a policy of insurance, either upon property or life, wherein the property insured was situated, or the person whose life was insured resided, at the date of the policy;

4. If it be * * * against a foreign corporation which has estate or debts owing to it within this State, wherein such land, estate, or debts, or any part thereof may be;

5. If it be on behalf of the commonwealth, whether in the name of the attorney-general or otherwise, it may be in the city of Richmond; * * *

See § 1068, subd. 2, and cross-references.

§ 3215. An action may be brought in any county or corporation wherein the cause of action, or any part thereof, arose, although none of the defendants reside therein.

§ 3216. Any action or suit mentioned in the two preceding sections may be in a circuit court of any county, or circuit or corporation court of any corporation, wherein it is allowed or required thereby to be brought; except that any such action or suit as is allowed by the fifth subdivision of section thirty-two hundred and fourteen, or required by the sixth subdivision of the said section, to be brought in the city of Richmond, shall be in the circuit court of the said city. And if any such action or suit as is mentioned in the said sixth subdivision is now pending or be hereafter brought in any other court than the circuit court of the city of Richmond, it shall, by order of such other court, be transferred, together with all the papers and proceedings therein, to the circuit court of the city of Richmond, to be proceeded in to a final decision in said circuit court. And if such action or suit be not so transferred, but be proceeded in to judgment or decree in the court wherein it is so pending, or shall have been so brought, such judgment or decree, so far as it may be against any of the public officers or public corporations mentioned in the said sixth subdivision or against the commonwealth, shall be void.

§ 3217. Jurisdiction of a proceeding by writ of quo warranto, or information in the nature of a writ of quo warranto, shall be in the circuit court of the county, or circuit or corporation court of the corporation, wherein the defendant or one of the defendants resides; or, if the defendant be a corporation, wherein its principal office is, or wherein its mayor, rector, president, or other chief officer resides; and, if there be no such office or officer, or none of the defendants reside in this State, the circuit court of the city of Richmond shall have jurisdiction.

See § 1068, subd. 2, and cross-references. Proceedings in quo warranto. §§ 3022-3028.

CHAPTER CLVIII.

Of Process, and the Order of Publication.

Sec. 3224. Summons, how served.

3225. On whom process against, or notice to, a corporation may be served.

3226. On whom served, when corporation operated by trustee or lessee.

3227. How served; what return of officer to show; how long to be served in certain cases before return day; what term "agent" includes.

3229. No judgment on returns of nihil.

§ 3224. (As amended March 4, 1892.) Any summons or scire facias may be served as a notice is served under section thirty-two hundred and seven,* except that when such process is against a corporation, the mode of service shall be as prescribed by the following section: the clerk issuing such process, unless otherwise directed, shall deliver or transmit therewith as many copies thereof as there are persons named therein, on whom it is to be served.

See § 1068, subd. 2, and cross-references. Summons against corporation to answer indictment. § 4015.

§ 3225. (As amended and re-enacted February 24, 1896; Laws 1895-6, chap. 416.) Process against or notice to a corporation may be served as follows: If the case be against * * * a bank, on its president, cashier, treasurer, or any one of its directors; if against a railroad company, on its president, cashier, treasurer, general superintendent, or any one of its directors; if against some other corporation created by the laws of this State, on the president, rector, or other chief officer, cashier, treasurer, secretary, or any one of its directors, trustees, or visitors; if against a corporation created by some other State or country, or in any case if there be not in the county or corporation wherein the case is commenced any other person on whom service can be aforesaid, on any agent of the corporation against which the case is (unless it be a case against a bank) or on any person declared by the laws of this State to be an agent of such corporation, and if there be no such agent in the county or corporation wherein the case is commenced, an affidavit of that fact and that there is no person in said county or corporation on whom there can be service aforesaid, publication of a copy of the process or notice once a week for four successive weeks in a newspaper printed in this State shall be a sufficient service of such process or notice, except that in the case of an insurance company created by the laws of this State process or notice shall be directed to the sheriff or sergeant of the county or corporation wherein the chief office of such company is located; and in case of any in-

surance company or surety company not created by the laws of this State but doing business in this State, process or notice shall be served in the manner prescribed by sections twelve hundred and sixty-six and twelve hundred and sixty-seven, chapter fifty-three of the Code of Virginia. When the publication is of process, it shall be made on an order directing the same in the case in which the process issues. The order may be entered either in court or by the clerk of the court at any time in vacation.

[Bank of Virginia will not be bound by process served on its president, such process proceeding from a bill, in which bank in its corporate character is not a party; nor will it be considered a notice to the bank, the president not being an officer in bank whose province it is to receive such notice. *Bank v. Craig*, 6 Leigh, 339.]

Service on any corporation, other than a bank of circulation, may be on any agent thereof in any county or corporation in which he resides or in which principal office or company is located. *R. R. Co. v. Cottrell*, 83 Va. 512; s. c., 3 S. E. Rep. 123.

Service upon corporations must be in this State upon officer or agent residing here. *Dillard v. Iron Co.*, 82 Va. 734; s. c., 1 S. E. Rep. 124.

There is no error in serving process against a non-resident corporation on an agent thereof resident of county where any suit is brought. *Tel. Co. v. Williams*, 86 Va. 696; s. c., 11 S. E. Rep. 106.

A corporation may be summoned as garnishee. *R. R. Co. v. Gallihue*, 12 Gratt. 653. See *R. R. Co. v. Griffith*, 76 Va. 913.]

§ 3226. (As amended February 27, 1894.) Where any corporation is operated by a trustee or trustees for its own benefit or for the benefit of its creditors, or by a lessee or lessees, or by a receiver or receivers appointed by any court, it shall be sufficient in any suit or proceeding against such corporation, its trustee or trustees, lessee or lessees, receiver or receivers, to serve the process or notice on such trustee or trustees, lessee or lessees, receiver or receivers, or on any one of them, or any of their respective agents, if none of said trustees, or lessors, or receivers reside in the county or corporation wherein the case is commenced. If there be no such agent or other person in the county or corporation in which the suit or other proceeding is commenced upon whom there can be service as aforesaid, publication of the process or notice may be made as prescribed by the preceding section, and such publication shall be equivalent to personal service on such trustee or trustees, lessee or lessees, receiver or receivers.

See § 1068, subd. 2, and cross-references.

§ 3227. Service on any person under either of the two preceding sections shall be by delivering to him a copy of the process or notice in the county or corporation wherein he resides, or his place of business is, or the principal office of the corporation is located;

*Providing for personal service on individuals.

Proof of incorporation; executions; indictments — Code, §§ 3229, 3280, 3582, 4015.

and the return shall show this, and state on whom and when the service was; otherwise, it shall not be valid. If the process or notice be served on an agent, or be served in any other county or corporation than that wherein the suit or other proceeding is brought or had, it shall be served at least ten days before the return day of such process or notice. The term "agent," as employed in each of the two preceding sections, shall be construed to include a telegraph operator, telephone operator, depot or station agent of a railroad company, and toll-gatherer of a canal or turnpike company.

See § 1068, subd. 2, and cross-references.

§ 3229. No judgment shall be rendered on a *scire facias*, or in any other case, on returns of nihil.

See § 1068, subd. 2, and cross-references.

CHAPTER CLIX.

Of the Rules, Pleadings Generally, and Judgments in the Office.

See. 3280. Proof of incorporation, not required, when.

§ 3280. * * * Where plaintiffs or defendants sue or are sued as a corporation, it shall not be necessary to prove the fact of * * * incorporation, unless with the pleading which puts the matter in issue, there be an affidavit denying such * * * incorporation.

See § 1068, subd. 2, and cross-references. Evidence of incorporation. § 1150.

[Corporation can only sue in name and style given to it by law. Porter v. Nekervis, 4 Rand. 359.]

When corporation sues, it need not set forth in declaration by way of averment, how it is a corporation, but may prove it on the trial. Grays v. Turnpike Co., 4 Rand. 578. This doctrine applicable to motions by corporations, as well as to suits brought by them. *Id.*

In suit brought by corporation, not necessary to aver that it is a corporation duly constituted, nor that it is authorized to sue in corporate name; but these questions may be put in issue by defendant or raised upon trial of general issue. Reos v. Bank, 5 Rand. 326.

In an action against a railroad company it is not necessary to aver in declaration that it is a corporation; nor is it necessary to prove on trial that defendant is a corporation, unless with plea there is filed an affidavit denying that it is. R. R. Co. v. Sherman, 30 Gratt. 602.

In a suit by a corporation the plea of "nul tiel corporationi," unaccompanied by affidavit denying corporate existence of plaintiff, does not put plaintiff to prove its corporate existence. Crews v. Bank, 31 Gratt. 348.

A bond executed to the president and managers of the "Culpepper Agricultural and Manufacturing Society," may be sued upon by the "Culpepper Agricultural and Manufacturing Society," that being the legal style of corporation. Culpepper Soc. v. Digges, 6 Rand. 105.

Corporations must sue in their true names, and contracts may be made with them by a mistaken name, if the mistake be only in syllabls et verbis, and not in sensu et re ipsa. *Id.*

Corporations of the United States and of foreign countries may maintain suits in courts of Virginia. In such suits declaration need not show how it was incorporated; under general issue, it may prove that it is incorporated. Taylor v. Bank, 5 Leigh, 471.

A bank brings a suit in Virginia, declaring that it is a corporate company by act of legislature of Ohio — plea, the general issue. At trial defendant demurs to plaintiff's evidence, demurrer contains no direct proof of legal incorporation of bank, nor can fact be fairly inferred from the evidence stated in demurrer. Held, this defective evidence is fatal to plaintiff's case. Jackson v. Bank, 9 Leigh, 240.

Nor can the want in the demurrer to evidence of the necessary proof to entitle bank to recover be supplied by a resort to a demurrer to the declaration which was overruled, whereby averment therein contained of the legal incorporation of the bank was omitted. *Id.*

In an action of assumpsit, writ and declaration is in name of plaintiff which indicates that such plaintiff is a corporation, but it is not stated to be such. Defendant pleads non-assumpsit, but it does not file an affidavit that plaintiff is not a corporation. Under statute it is not necessary that plaintiff should prove it is a corporation. Gillett v. Stove Co., 29 Gratt. 565.

Not necessary for foreign corporation to show how it was incorporated; it may prove that it is incorporated under general issue. Taylor v. Bank, 5 Leigh, 471.]

TITLE L. JUDGMENT LIENS AND EXECUTIONS.

CHAPTER CLXXV.

Of Executions for Specific Property.

See. 3582. Executions against corporations.

§ 3582. Such executions as may issue against a natural person may issue against a corporation; and where a judgment is against several persons jointly, executions thereon shall be joint against them all.

See § 1068, subd. 2, and cross-references.

[Deed of trust executed by a corporation will enure ratably to benefit of all its then creditors, except where it is executed to secure a debt or money borrowed at time of its execution. Clinch Co. v. Kurth, 90 Va. 737.]

TITLE LIII. PROCEEDINGS IN CRIMINAL CASES.

CHAPTER CXCVI.

Of Indictments and Process Thereon.

See. 4015. Summons against a corporation to answer indictment, how served. Proceedings if it fail to appear; how expense of publication is paid.

§ 4015. A summons against a corporation to answer indictment, presentment, or in-

Foreign mining, etc., corporations; foreign railroads — Acts, February 5 and 17, 1890.

formation may be served as provided in section thirty-two hundred and twenty-five; and if the defendant after being so served, fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared and pleaded not guilty. And where, in any such case, publication of a copy of the process is required according to the said section, the expense of such publication may be cer-

tified by the court to the auditor of public accounts, and shall be paid out of the treasury of the commonwealth; but the same shall be taxed with other costs, and collected from the defendant, if judgment be for the commonwealth, and be paid into the treasury by the officer collecting the same.

See § 1068, subd. 2, and cross-references. Process and order of publication. §§ 3224-3229.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1887.

1. To enable foreign mining and manufacturing corporations to do business in this State.
2. To preserve the jurisdiction of this State over foreign railroad corporations.
3. To provide for taxation of bank stock.
4. To provide for assessment of taxes on persons and property.
5. To allow notaries, etc., who are stockholders to take acknowledgments of deeds, etc., of the corporation.
6. For the protection of discharged employees.
7. To fix number of directors in certain corporations.
8. To provide mode for recovering unpaid subscriptions to stock.
9. To confirm charters granted by the courts to certain corporations.
10. To require corporations to furnish names of officers to clerk of Wythe county.
11. To require payment of charter fees.
12. To provide a tax on the extension or revival of charters.
13. To require employers to provide seats for female employees.

Act 1.

AN ACT to enable certain mining and manufacturing corporations of other States or countries to conduct operations in this State.

Section 1. Be it enacted by the general assembly of Virginia, That corporations chartered or organized under the laws of other States or countries and authorized to manufacture iron, steel, or other metals, or any articles or materials made from metal, wood, cotton, or wool, or to mine ores or coals, may carry on in this State the business authorized by their respective charters or by the articles under which they are or may be organized; and for this purpose may purchase, acquire, lease, sell, mortgage, and convey real estate in fee and any other interest in lands and personal property of every kind suitable for their business, and erect and operate all requisite furnaces, forges, mills, foundries, machinery, buildings, plants, and appliances; Provided That no such company shall be allowed to acquire and hold more than ten thousand acres in any one county.

§ 2. That every such corporation desiring so to carry on its business in this State shall first comply with the provisions of section eleven hundred and four of the Code of Virginia, and as to contracts made, prop-

erty located, and the franchises hereunder exercised within this State, every such corporation shall for all purposes be deemed and treated as a corporation of this State, and be subject to the jurisdiction of the courts thereof.

§ 3. All taxes, dues, and demands that may become due to the State of Virginia shall be paid in lawful money of the United States and not in coupons.

§ 4. This act shall be in force from its passage.

(Approved February 5, 1890.)

See § 1104, and cross-references. Foreign railroad corporations. Act 2.

[A corporation of another State may maintain an action in the courts of Virginia. *Bank v. Plindall*, 2 Rand. 465; *Taylor v. Bank*, 5 Leigh, 471.

In an action by a foreign corporation, it is not necessary to allege that plaintiff has complied with the law relating to foreign corporations. *Nickles v. People's B. & L. S. Assn.*, 25 S. E. Rep. 8.]

Act 2.

AN ACT to preserve the jurisdiction of this State over corporations of other States or countries operating railroads in this State.

Section 1. Be it enacted by the general assembly of Virginia, That whenever any corporation chartered or existing by, under, or in pursuance of the laws of any State or country other than the State of Virginia, shall assume the operation and control of any railroad in this State as purchaser or lessee, or in pursuance of a consolidation or merger of rights, property, franchises, and interest, or otherwise, such corporation shall ipso facto become and be a corporation of this State in respect to the works, property, and franchises controlled or operated by it within the State, and shall as such be subject to the jurisdiction of the courts of this State, and in all respects governed and controlled by the laws of this State.

§ 2. This act shall be in force from its passage.

(Approved February 17, 1890.)

See § 1068, subd. 2, and cross-references.

Taxation — Acts, February 28 and March 6, 1890.

Act 3.

AN ACT providing for the taxation of shares of stock issued by banks located in counties and cities.

Section 1. Be it enacted by the general assembly of Virginia, That hereafter each county or city in which any bank, either national or State, is so located, may, subject to the conditions mentioned below, tax all the shares of stock issued by any such bank so located within its limits at the same rate as is assessed upon other moneyed capital in the hands of individuals residing in such county or city.

§ 2. That in so taxing said shares the said county or city authorities, respectively, shall follow the mode of assessment and manner of collection prescribed by statute for the collection of State taxes upon said shares.

§ 3. Whenever any commissioner of the revenue, before closing his assessment-rolls or tax-lists, shall receive from the cashier of a bank furnishing a list of the holders of bank stock, as required by law for the purposes of State taxation, or from the owner of any stock mentioned therein, a certificate of the commissioner of the revenue of the county or city of the State in which the owner of such stock lives, stating that certain shares of the stock mentioned in said list are owned by a resident of that county or city, and that the same have been returned for taxation for that year in such city or county, then the said commissioner of the revenue to whom the said list of the holders of such bank stock has been furnished, shall deduct from the aggregate value of the shares set forth in said list the aggregate value of the shares mentioned in said certificate. The shares owned by non-residents of this State shall be taxed only at the place where the bank issuing the share is located.

§ 4. This act shall be in force from its passage.

(Approved February 28, 1890.)

See § 485, and cross-references.

Act 4.

AN ACT to provide for the assessment of taxes on persons, property, and incomes, and on licenses to transact business and imposing taxes thereon for the support of the government and public free schools, and to pay the interest on the public debt, etc.

Section 1. Be it enacted by the general assembly of Virginia, That the taxes on lands, lots, persons, and subjects, as ascertained under the provisions of the act prescribing general provisions in relation to commissioners of the revenue and the assessment of taxes

on persons, property, income, licenses, and so forth, under the Code of eighteen hundred and eighty-seven, and on the persons and subjects required to be listed by chapter one of this act, and on business or other subjects not required to be listed, but to be taxed, shall for the year commencing on the first day of February, eighteen hundred and ninety, and each year thereafter, be as follows:

SCHEDULE C.

§ 8. The classification and numbers under schedule C shall be as follows, to wit:
On personal property in choses in action, moneys, credits, and capital.

First. The commissioners shall require each person residing in his district, city, or town to exhibit and make an oath to a statement in the aggregate of all bonds, notes, and other evidences of debt due and payable to such persons, in excess of one hundred dollars, the amounts of such bonds, notes and other evidences of debt under one hundred dollars each to be given in under oath, in the aggregate, the solvency of which, in cases of doubt, as well as the value thereof, shall be determined by the said commissioner; his said list shall be signed by the commissioner and taxpayer, including bonds due from railroads and canal companies, bonds of counties, cities, and towns, and bonds of other States and corporations; demands and claims, however evidenced, owing or coming to such person, whether due or not, from debtors residing out of or within the State or country, whether secured by deed of trust or by judgment, or not, deducting from the aggregate amount thereof all such bonds, demands, or claims, not otherwise deducted, owing to others from such person as principal debtor, and not as guarantor, indorser, or surety. The aggregate of principal, interest, and exchange shall constitute the amount of a bond, demand or claim due and payable; and the principal, with interest rebated when the amount of the bond, demand, or claim bears no interest, shall constitute the amount of the bond, demand or claim not yet due and payable. But no bond, demand, or claim constituting a part of the capital, as defined in chapter one of this act, of a business done out of this State shall be included in this section. * * *

Second. He shall ascertain from each person in his district, city, or town the value of capital, including moneys, credits, or other thing remaining invested, whether said investment was made originally in this or any other State or country, and the value of all capital loaned, used, or employed in business out of this State by himself, his agent, or other person for him.

Third. He shall ascertain the value of all capital of incorporated joint-stock companies

Notaries; protection, etc.; number, etc.—Acts, Feb. 2, March 3, 1892, and Dec. 14, 1895.

not otherwise taxed; but real estate belonging to such company shall not be held to be capital, but shall be listed and taxed as property, and not as capital.

§ 9. On all personal property in choses in action, and, etc., and toll-bridges, turnpikes, and ferries, and moneys in currency as embraced in this schedule, there shall be a tax of thirty cents on every hundred dollars value thereof, the proceeds of which shall be applied to the payment of expenses of the government and a further tax of ten cents on every hundred dollars of the value thereof, which shall be applied to the support of the public free schools of this State.

SCHEDULE F.

License Taxes from Corporations.

§ 111. No corporation created by any other State or country shall transact business of any kind in this State, either by itself or its agents, until it shall have first paid the license required by law in cash, and not in coupons, and have complied with all other conditions imposed by law. Any violation of this act shall be a misdemeanor, and be punished by a fine of not less than five hundred dollars nor more than two thousand dollars.

§ 112. It shall not be lawful for any incorporated company doing business in this State to exact or receive of persons dealing with it, or charge to the account of such persons with the company the sum required by the State, county, city, or town to be paid for the license or business of such company, or any portion thereof, or any amount on account thereof. Any company violating this provision shall, for every such violation, be liable to a fine of one hundred dollars, one-half of which shall go to the informer.

(Approved March 6, 1890.)

See § 485, and cross-references.

Act 5.

AN ACT to allow notaries or other officer who hold stock in companies to take acknowledgments to deeds or other writing which said companies execute, provided said notaries or other officer are in no otherwise interested.

Section 1. Be it enacted by the general assembly of Virginia, That no acknowledgment heretofore or hereafter taken to any deed or other writing executed by a company shall be held to be invalid by reason of said acknowledgment having been taken by a notary public or other officer who at the time of taking said acknowledgment was a stockholder in the company which executed said deed or writing, and who was in no otherwise interested, and the record of any such deed or writing heretofore made shall in all respects be deemed valid, notwithstanding

ing the fact that the notary or other officer was at the time of such acknowledgment a stockholder in the company executing said deed or writing; Provided said notary public or other officer was in no otherwise interested when said acknowledgment was taken.

§ 2. This act shall be in force from its passage.

(Approved February 2, 1892.)

See § 1115.

Act 6.

AN ACT for the protection of discharged employees.

Section 1. Be it enacted by the general assembly of Virginia, That no corporation, manufacturer, or manufacturing company doing business in this State, or any agent or attorney of such corporation, manufacturer or manufacturing company, after having discharged any employe from the service of such corporation, manufacturer, or manufacturing company, shall willfully and maliciously prevent or attempt to prevent, by word or writing, directly or indirectly, such discharged employe from obtaining employment with any other person or corporation. For any violation of this section the offender shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than one hundred nor more than five hundred dollars. But this section shall not be construed as prohibiting any corporation, manufacturer, or manufacturing company from giving in writing, on application from any other person or corporation, a truthful statement of the reason for such discharge.

§ 2. This act shall be in force from its passage.

(Approved March 3, 1892.)

Lien of employes of corporation, enforcement of, etc. §§ 2485-2486.

Act 7.

AN ACT to fix the number of the board of directors in a joint-stock company where the capital stock does not exceed ten thousand dollars.

Section 1. Be it enacted by the general assembly of Virginia, That hereafter when any joint-stock company shall be incorporated under the laws of the State of Virginia, if the maximum of the capital stock of said company shall not exceed ten thousand dollars, the court, or judge in vacation granting the charter, may, in its or his discretion, authorize and fix the directors who are to manage the affairs of the company at the number of three directors, to include the president. This number to hold for the first year and thereafter, unless the stockholders, in general meeting, shall prescribe a different number.

§ 2. This act shall be in force from its passage.

(Approved December 14, 1895.)

Subscriptions; confirmation, etc.—Acts, Dec. 19, 1895, Feb. 12 and March 3, 1896.

Act 8.

AN ACT to prescribe the mode by which unpaid subscriptions to joint-stock companies may be recovered by said companies, their receivers, or assignee.

Section 1. Be it enacted by the general assembly of Virginia, That all suits or motions for the recovery of unpaid subscriptions to the stock of any joint-stock company, shall be brought in the courts of common law of this commonwealth, in the county or corporation where the defendant resides, and said courts shall have exclusive jurisdiction to hear and determine all questions involving the validity of such subscriptions.

§ 2. In all such cases the defendant shall be entitled to a jury, where the amount involved exceeds twenty dollars. All pleas, defenses and evidence, which would be admissible if the company were solvent, shall be equally admissible, and shall have the same effect in law in any action brought after the insolvency of any such company; and this act shall apply to all suits heretofore or hereafter brought, where no final judgment or decree, on the merits, has been rendered.

§ 3. All acts and parts of acts inconsistent herewith, are hereby repealed.

§ 4. This act shall be in force from its passage.

(Approved December 19, 1895.)

Act 9.

AN ACT to ratify, confirm, and approve charters, incorporating joint-stock companies granted by the circuit or corporation courts of this State, or by the judge of any such court in vacation, in which the capital stock is not in excess of ten thousand dollars, and the directors, including the president, are fixed at three.

Section 1. Be it enacted by the general assembly of Virginia. That if any charter incorporating a joint-stock company heretofore granted by any circuit or corporation court of this State, or by any one of the judges of such courts in vacation, the capital stock be not in excess of ten thousand dollars, and the directors for the first year and thereafter, including the president, are fixed at the number of three, unless the stockholders in general meeting shall prescribe a different number, every such charter is, as to such provisions respecting the number necessary to constitute the directory, including the president, hereby ratified, approved, and confirmed.

§ 2. Every such joint-stock company shall be deemed and held to have been duly organized and fully authorized to conduct business according to law from and after the date when its charter was lodged with the secretary of the commonwealth, and with a board

of directors (including the president), constituted as provided for in the first section of this act.

§ 3. This act shall take effect from its passage.

(Approved February 12, 1896.)

Act 10.

AN ACT to require corporations to furnish for record in the clerk's office of the county court of Wythe county the names of their officers and directors, and prescribing the penalty for failure to do so.

Section 1. Be it enacted by the general assembly of Virginia, That every mining and manufacturing corporation, whether chartered by the laws of this State or of some other State, doing business in the county of Wythe, shall, within thirty days after each election of the officers and directors of said corporation, furnish to the clerk of the county court a transcript from the minutes of said corporation giving the names of said officers and directors, which transcript the clerk of the county court is required to place on file in his office, in a separate file for each year, and said clerk shall prepare an index in which he shall arrange, in alphabetical order, the names of all such corporations, for which service, in each case, the clerk shall be paid by said corporation a fee of fifty cents (50 cents).

For failure to file such transcript, each corporation so failing shall be fined not less than twenty-five nor more than one hundred dollars for every year that they fail to furnish such transcript. And if such transcript should not be filed as required by this act, then all service of legal process on any agent of said corporation shall be held to be sufficient service of such process on said corporation, even though the president or other officers, or some of the directors, may reside in the county where it is carrying on its business.

§ 2. This act shall be in force from its passage.

(Approved March 3, 1896.)

Act 11.

AN ACT to amend and re-enact an act entitled an act to require the payment of fees on certain charters, approved February 10, 1890, as amended and re-enacted by an act approved February 28, 1890, and further amended and re-enacted by an act approved January 22, 1894, and as further amended and re-enacted by an act approved March 3, 1896.

Be it enacted by the general assembly of Virginia, That an act entitled an act to require the payment of fees on certain charters, approved February tenth, eighteen hundred and ninety, as amended and re-enacted

Tax on organization — Act, March 1, 1898.

by an act entitled an act to amend and re-enact section one of the said act, approved February twenty-sixth, eighteen hundred and ninety, and further amended and re-enacted by an act entitled an act to amend section two of said act, approved January twenty-second, eighteen hundred and ninety-four, as further amended and re-enacted by an act entitled an act to amend and re-enact said act, approved March third, eighteen hundred and ninety-six, be amended and re-enacted so as to read as follows:

Section 1. Be it enacted by the general assembly of Virginia, That every charter of incorporation hereafter passed or renewed or extended by the general assembly of Virginia shall be, and continue to be, wholly inoperative and ineffectual for any and all purposes whatever until the payment of fees to be ascertained and fixed as follows:

For a company whose maximum stock is five thousand dollars or under, twenty-five dollars; for a company whose capital stock is over five thousand dollars and not to exceed ten thousand dollars, fifty dollars; over ten thousand dollars and not to exceed twenty-five thousand dollars, seventy-five dollars; over twenty-five thousand and not to exceed fifty thousand dollars, one hundred and twenty-five dollars; over fifty thousand dollars and not to exceed one hundred thousand dollars, two hundred dollars; over one hundred thousand dollars and not to exceed three hundred thousand dollars, three hundred and twenty-five dollars; over three hundred thousand and not to exceed five hundred thousand dollars, four hundred and fifty dollars; over five hundred thousand dollars and not to exceed eight hundred thousand dollars, five hundred and seventy-five dollars; over eight hundred thousand dollars and not to exceed one million dollars, seven hundred and fifty dollars; over one million dollars, one thousand dollars.

For the purpose of this act, the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock, but the fee to be paid under this section shall in no case exceed the sum of one thousand dollars; Provided, however, That building fund associations shall pay twenty-five dollars only for each certificate of incorporation filed or charter granted; And provided further, That no fee shall be required of the companies organized for religious, benevolent, or literary purposes, or such companies as are not organized for profit and have no capital stock; mutual insurance companies, and other mutual companies not organized for strictly benevolent or charitable purposes shall pay a fee of twenty-five dollars.

§ 2. Where a charter of incorporation is to be granted, renewed, or extended under the provisions of section one thousand one hundred and forty-five of the code of Virginia, the fees shall be as follows:

For a company whose maximum stock is five thousand dollars or under, fifteen dollars; for a company whose capital stock is over five thousand dollars and not to exceed ten thousand dollars, thirty dollars; over ten thousand dollars and not to exceed twenty-five thousand dollars, forty-five dollars; over twenty-five thousand dollars and not to exceed fifty thousand dollars, seventy-five dollars; over fifty thousand dollars and not to exceed one hundred thousand dollars, one hundred and twenty dollars; over one hundred thousand dollars and not to exceed three hundred thousand dollars, one hundred and ninety-five dollars; over three hundred thousand dollars and not to exceed five hundred thousand dollars, two hundred and seventy dollars; over five hundred thousand dollars and not to exceed eight hundred thousand dollars, three hundred and forty-five dollars; over eight hundred thousand dollars and not to exceed one million dollars, four hundred and fifty dollars; over one million dollars, six hundred dollars.

The clerk of the court in which, or the judge thereof in vacation, such charter is to be granted shall collect such fees and receipt for the same to the party or parties presenting the petition for incorporation; and such court, or the judge thereof in vacation shall not consider such petition nor grant such charter unless the clerk's receipt for the proper fee, as hereinbefore provided, is presented therewith. When such charter is granted by the court or judge, it shall be the duty of the clerk to record the same and forthwith to pay in to the State treasurer such fee less the amount of five per centum, which said clerk may retain as compensation for collecting the same: Provided, however, in case the court, or judge thereof in vacation, denies such petition for incorporation, then the clerk is to refund to the party or parties presenting such petition the fee paid by them; And provided, further, in case the court, or judge thereof in vacation, increases or diminishes the amount of the capital stock of such company, that the clerk is to collect such additional fee before recording such charter, and to do with the same as above directed, or to refund such overpayment as may previously have been made; and the fact of such payment, in case the charter is granted under the provisions of section one thousand one hundred and forty-five of the Code of Virginia, shall be certified by the auditor of public accounts to the secretary of the commonwealth; and where the act of incorporation is to be passed by the general assembly, such fee shall be paid direct into the State treasury, and said fee shall be thus paid before the bill providing for the incorporation or renewal or extension shall be referred to the committee of either house of the general assembly by the clerk of said house, or before any other

Tax, etc.; females employes — Acts, March 1, 1898, Dec. 13, 1897, Jan. 12, 1898.

action shall be taken on said bill, and such payment shall be evidenced by the receipt of the State treasurer produced to said clerk: And it is further provided that no fee shall be required to be paid on any amended charter that has been passed during the present session of the general assembly, or may hereafter be passed, or on any charter confirming or amending a charter granted by a court or judge thereof in vacation, unless the maximum amount of the capital stock shall be increased, or extended or renewed, in which case the same proportionate charge for such increase shall be made as hereinbefore provided; but if no fee shall have been paid on the granting of the original charter, the fee to be charged when such amended charter is granted shall be the same as if the amended charter was an original charter; and if any amendment is offered to a bill increasing the capital stock of such company, a tax shall be paid on the amount of the increase as hereinbefore provided; and if there is an extension or renewal of said charter the same fee shall be paid as in case of an original charter, and if the capital stock is decreased, the decrease shall be refunded as hereinbefore provided; and further, if the general assembly should fail or refuse to pass any bill of incorporation, the tax or fees paid as aforesaid shall be returned to the parties applying for said charter upon the certificate of the keeper of the rolls that said bill was not passed.

§ 3. In the case of charters granted under the provisions of section one thousand one hundred and forty-five of the code of Virginia, or by the general assembly of Virginia, and in the case of any company organized under the laws and the jurisdiction beyond this State, and proposing hereafter to transact business in this State, the secretary of the commonwealth shall not record the articles of incorporation, nor shall the companies have the right to transact business or conduct operations of any character in this State, until the fact of the payment of proper fees in each case, as hereinbefore provided, has been certified to him by the auditor of public accounts.

§ 2. This act shall be in force from its passage.

(Approved March 1, 1898.)

See §§ 403-405, 1145. Fees of secretary of commonwealth. § 1151.

[For construction of above act, see *Saw Co. v. Flournoy*, 88 Va. 1029.]

Act 12.

AN ACT to provide for a tax on the extension or revival of charters.

Section 1. Be it enacted by the general assembly of Virginia, That if any extension of time of any charter be asked for, the same fee shall be charged as if it was an original charter, and such bill shall not be referred to a committee of either house or any other action had thereon by any court of this commonwealth, or the general assembly, until the fee as provided by law has been paid into the treasury; Provided, That if the said extension of charter should not be granted, the tax or fees shall be returned.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall be in force from its passage.

(Approved December 13, 1897.)

Act 13.

AN ACT to require employers of females in stores, shops, offices, or manufactories as clerks, operatives, or helpers in any business, trade, or occupation, to provide seats for such female employes, and providing a penalty for failure or refusal to provide such seats.

Section 1. Be it enacted by the general assembly of Virginia, That all persons who employ females in stores, shops, offices, or manufactories as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the State of Virginia, shall be required to procure and provide proper and suitable seats for all such females, and shall permit the use of such seats, rests or stools, as may be necessary, and shall not make any rules, regulations or orders preventing the use of such stools or seats when any such female employes are not actively employed in their work in such business or employment.

§ 2. If any employer of female help in the State of Virginia shall neglect or refuse to provide seats, as provided in this act, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring females to remain standing when not necessarily employed in a service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court.

§ 3. This act shall be in force from its passage.

(Approved January 12, 1898.)

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WASHINGTON.

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LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO 1891.

WASHINGTON.

CONSTITUTION OF WASHINGTON -- 1889.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

- Sec. 8. No law granting any privilege or franchise shall be passed by the legislature.
12. No law granting to any class of citizens, etc., privileges or immunities.
16. Private property shall not be taken without just compensation.
23. Laws impairing obligation of contracts prohibited.

ARTICLE II.

Legislative Department.

- Sec. 28. The legislature is prohibited from enacting any private or special laws, except in the following cases.
29. Contract convict labor shall be abolished.
39. Officers of the State may not accept a pass from any railroad or other corporation.

ARTICLE VII.

Revenue and Taxation.

- Sec. 2. Uniform and equal rate of assessment shall be provided for.
3. The legislature shall provide by general law for the levying of taxes on all corporation property.
4. The power to tax corporations shall not be surrendered.

ARTICLE VIII.

State, County and Municipal Corporations.

- Sec. 5. The credit of the State shall not be given or loaned.
7. No subdivision of the State shall become indebted to an amount exceeding one and one-half per cent. of the taxable property.

ARTICLE XII.

Corporations Other than Municipal.

- Sec. 1. Corporations may be formed under general laws; all laws relating to corporations may be altered, amended or repealed.
2. All existing charters, etc., under which an actual organization shall not have taken place at the time of the adoption of this Constitution, shall not be valid.

- Sec. 3. The legislature shall not extend any franchise or charter, nor remit the forfeiture of the same, of any corporation now existing.
4. Personal liability of stockholders.
5. Corporation defined.
6. Regulations in regard to the issue of stock by corporations.
7. Foreign corporations shall not be allowed to do business in this State on more favorable conditions than domestic corporations.
8. No corporation shall lease or alienate any franchise, etc.
9. The State must not loan its credit.
10. The right of eminent domain.
11. Only lawful money of the United States to be circulated; the liabilities of stockholders in any banking and insurance corporations.
12. In regard to an officer of any banking institution receiving deposits after the knowledge of the bank being insolvent.
13. All railroads, canal and other transportation companies are common carriers and subject to legislative control.
14. No railroad company, or other common carrier, shall combine with owners of vessels, etc.
15. No discrimination in charges for passengers or freight permitted.
16. Competing lines may not consolidate.
17. Rolling stock and other movable property, shall be considered personal property.
18. The legislature shall establish transportation charges for passengers and freight.
19. Telephone and telegraph lines may be constructed and maintained; railroad corporations shall allow such companies right of way along their roads.
20. No railroad or other transportation company shall grant free passes, etc.
21. Railroad companies shall allow express companies transportation over their lines.
22. Monopolies and trusts prohibited.

ARTICLE XXI.

Water and Water Rights.

- Sec. 1. The use of waters of this State for irrigation, mining and manufacturing purposes shall be deemed a public use.

ARTICLE I.

Declaration of Rights.

- § 8. No law granting irrevocably any privilege, franchise, or immunity shall be passed by the legislature.

Declaration of rights; tax'n — Const., Art. 1, §§ 12, 16, 23; Art. 2, §§ 28, 29, 39; Art. 7, §§ 2, 3.

§ 12. No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

See Const., art. II, § 28. Corporation to be formed under general laws. Art. XII, § 1.

§ 16. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, and in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public.

Right of eminent domain. Const., art. XII, § 10. Public use, what is. Art. XXI, § 1. See § 1589.

[Railroad incorporated under a special act of the legislature may, at its election, proceed to condemn land under the general act relating to corporations. *R. R. Co. v. Sohns*, 1 Wash. T. R. 558.]

Where lands have been appropriated by the corporation before institution of proceedings as provided by law, landowner may institute a common-law action for trespass. *Downs v. S. & M. Ry. Co.*, 5 Wash. 778; s. c., 32 Pac. Rep. 345; 33 id. 973.]

§ 23. No * * * law impairing the obligations of contracts shall ever be passed.

Laws relating to corporations may be altered or repealed. Const., art. XII, § 1. Power to tax not to be surrendered. *Id.*, art. VII, § 4.

[A statute requiring treasurer of a corporation to retain a certain percentage of the interest accruing on the company's bonds payable outside the State, to persons residing outside the State, impairs the obligation of contracts. *Ry. Co. v. Penn.*, 15 Wall. 300.]

A State Constitution which violates this provision is void. *Gunn v. Barry*, 15 Wall. 610. An exemption from taxation granted to a corporation cannot be taken away by legislative act. *Humphrey v. Peques*, 16 Wall. 244.]

ARTICLE II.

Legislative Department.

§ 28. The legislature is prohibited from enacting any private or special laws in the following cases:

6. For granting corporate powers or privileges.

10. Releasing or extinguishing, in whole or in part, the indebtedness, liability, or other obligation of any person or corporation of this State, or to any municipal corporation therein.

Special laws prohibited. Const., art. I, § 8. Corporations to be formed under general laws. Art. XII, § 1.

§ 29. After the first day of January, eighteen hundred and ninety, the labor of convicts of this State shall not be let out by contract to any person, co-partnership, company, or corporation, and the legislature shall by law provide for the working of convicts for the benefit of the State.

§ 39. It shall not be lawful for any person holding public office in this State to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the Legislature shall pass laws to enforce this provision.

ARTICLE VII.

Revenue and Taxation.

§ 2. The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in this State, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property;

* * *

Laws for assessment and collection of taxes. See Act of 1897, at p. 27.

[Taxes upon corporations may be proportioned to the income received, as well as to the value of the privileges granted, or the property owned. *Minot v. R. R. Co.*, 18 Wall. 206. A corporation created by act of Congress is not exempt from State taxation. *R. R. Co. v. Peniston*, 18 Wall. 5.]

§ 3. The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.

Laws for assessment and collection of taxes. See Act of 1897, at p. 27. Duties of assessors and county auditors regarding foreign corporations. §§ 1528-1532. Railroad property liable to taxation. Const., art. XII, § 17.

Corporations — Const., Art. viii, §§ 5, 7; Art. xii, §§ 1-6.

§ 4. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

See Const., art. I, § 23.

ARTICLE VIII.

State, County and Municipal Corporations.

§ 5. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, company, or corporation.

See Const., art. XII, § 9.

§ 7. No county, city, town, or other municipal corporation shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, company, or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

See preceding section, and § 9, art. XII.

[Above section construed. *Lancey v. King Co.*, 45 Pac. Rep. 645.]

ARTICLE XII.

Corporations other than Municipal.

Section 1. Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended, or repealed by the legislature at any time, and all corporations doing business in this State may, as to such business, be regulated, limited, or restrained by law.

Special acts prohibited. Const., art. I, § 8; art. II, § 28. Formation of corporations. Statutes, §§ 1497 et seq.

§ 2. All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

See next section.

§ 3. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing or which shall hereafter exist under the laws of this State.

See preceding section.

§ 4. Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, shall be liable for the debts of the corporation to the amount of his unpaid stock, and no more, and one or more of the stockholders may be joined as parties defendant in suits to recover upon this liability.

Stockholders in banking corporation, liability of. § 11, post. Liability of stockholders in general. Statutes, § 1511.

[Where a creditor obtained judgment against a corporation and other persons, brought suit against a stockholder to enforce payment of unpaid subscription, a complaint alleging that corporation had no assets except its unpaid subscriptions, but which fails to show that the judgment could not have been made out of the property of the other judgment creditor, does not state a cause of action. *Burch v. Taylor*, 1 Wash. 245; s. c., 24 Pac. Rep. 438.

Unpaid stock subscriptions are a trust fund for the benefit of all the creditors, and to enforce a right to participate therein requires a proceeding in equity. *Id.*; *Conover v. Hull*, 39 Pac. Rep. 166. A subscriber to capital stock who has, in good faith, transferred his shares to another, which transfer has been accepted by the corporation before an assessment is made, is not liable for the unpaid subscription. *Stewart v. P. & P. Co.*, 1 Wash. 521; s. c., 20 Pac. Rep. 605.

Subscribers to stock cannot escape liability as against creditors thereof on ground that a portion of the stock was illegally subscribed for by another corporation, when the other stockholders have all taken with knowledge of that fact, and have paid a portion of their subscriptions to enable corporation to commence business and incur indebtedness. *Cole v. R. R. Co.*, 9 Wash. 487; s. c., 37 Pac. Rep. 700.

On insolvency, and appointment of a receiver, the liability of stockholders is to be enforced at the suit of the receiver. *Wilson v. Book*, 43 Pac. Rep. 939.

When it need not be alleged by creditor enforcing stockholders' liability that a demand has been made by corporation on stockholders for unpaid subscription. *Adamant Mfg. Co. v. Wallace*, 48 Pac. Rep. 415. Or that capital stock has been fully subscribed. *Id.*

Where capital stock is paid up in property, it must, as against creditors relying thereon, equal in value the face value of the stock. *Id.*

§ 5. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts in like cases as natural persons.

Corporation may sue and be sued. § 1500 (1), and note. The term "person" includes corporations. Code Civ. Pro., § 1709; Revenue Act of 1897, at p. 27.

§ 6. Corporations shall not issue stock, except to bona fide subscribers therefor, or their assignees; nor shall any corporation issue any bond or other obligation for the payment of money, except for money or property received or labor done. The stock of corporations shall not be increased, ex-

Corporations — Const., Art. xii, §§ 7-15.

cept in pursuance of a general law, nor shall any law authorize the increase of stock, without the consent of the person or persons holding the larger amount in value of the stock, nor without due notice of the proposed increase having been previously given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Certain corporations may issue bonds. See Act of 1893, at p. 24. Transfer of stock. § 1506. Subscriptions and assessments. § 1507. Capital stock, how increased and diminished. § 1515.

[Where stock is issued honestly for property and franchises, the stockholders will not be liable to creditors on the ground of an overvaluation of the property. *Turner v. Bailey*, 12 Wash. 634; s. c., 42 Pac. Rep. 115.

Where capital stock is paid up in property, it must, as against creditors relying thereon, equal in value the face value of the stock. *Adamant Mfg. Co. v. Wallace*, 48 Pac. Rep. 415.]

§ 7. No corporation organized outside the limits of this State shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

Provisions concerning foreign corporations. §§ 1524-1532.

§ 8. No corporation shall lease or alienate any franchise so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

[Transfer by an insolvent corporation of all its property to the mortgagee thereof is not inhibited by above section. *Klosterman v. R. R. Co.*, 8 Wash. 281; s. c., 36 Pac. Rep. 136.]

§ 9. The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

See Const., art. VIII, §§ 5, 7.

§ 10. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

See Const., art. I, § 16. Public use, what is. Art. XXI, § 1.

§ 11. No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any

banking or insurance corporation or joint-stock association shall be individually and personally liable equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing, while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

[Under above section, the liability of a stockholder in a banking corporation in addition to the amount of his stock is secondary, and cannot be enforced by corporate creditors independently of an action against the corporation. *Wilson v. Book*, 43 Pac. Rep. 939.]

§ 12. Any president, director, manager, cashier, or other officer of any banking institution who shall receive or assent to the reception of deposits after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances, shall be individually responsible for such deposits so received.

§ 13. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road, whether the same be now constructed or may hereafter be constructed, to intersect, cross, or connect with any other railroad, and when such railroads are of the same or similar gauge they shall, at all crossings and at all points where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each other's passengers, tonnage, and cars, without delay or discrimination.

Restrictions upon railroads. See following sections.

§ 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

§ 15. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other trans-

poration company, or individual, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

§ 16. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a competing line.

Monopolies and trusts prohibited. § 22, post.

§ 17. The rolling stock and other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to taxation and to execution and sale in the same manner as the personal property of individuals, and such property shall not be exempted from execution and sale.

§ 18. The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the State, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established, and its powers and duties fully defined by law.

§ 19. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this State, and said company shall receive and transmit each other's messages without delay or discrimination, and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this State shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this State shall allow any telegraph corporation or company any facilities, privileges, or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of

uniform operation, provide reasonable regulations to give effect to this section.

See § 21, post.

§ 20. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this State. The legislature shall pass laws to carry this provision into effect.

§ 21. Railroad companies, now or hereafter organized or doing business in this State shall allow all express companies organized or doing business in this State transportation over all lines or railroad owned or operated by such railroad companies upon equal terms with any other express company; and no railroad corporation organized or doing business in this State shall allow any express corporation or company any facilities, privileges, or rates for transportation of men or materials or property carried by them, or for doing the business of such express companies, not allowed to all express companies.

See § 19, ante.

§ 22. Monopolies and trusts shall never be allowed in this State, and no incorporated company, co-partnership or association of persons in this State shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any co-partnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchises.

Consolidation of competing lines prohibited. § 16, ante.

ARTICLE XXI.

Water and Water Rights.

Section 1. The use of the waters of this State for irrigation, mining, and manufacturing purposes shall be deemed a public use.

Eminent domain. See Const., art. 1, § 16; art. XII, § 10.

GENERAL STATUTES OF WASHINGTON—1891.

TITLE XVIII. OF PRIVATE CORPORATIONS.

- Ch. 1. Of the organization and management of corporations generally.
 2. Of foreign corporations.
 6. Provisions specially applicable to mining and manufacturing corporations.

CHAPTER I.**Of the Organization and Management of Corporations Generally.**

- Sec. 1497. How formed; subject to what conditions and liabilities.
 1498. Articles of incorporation to be filed, and to state what.
 1499. Copy of articles as evidence.
 1500. Powers of corporation enumerated.
 1501. Certain private corporations authorized to hold property.
 1502. Powers of, how exercised; elections, vacancies, etc.
 1503. Not to be dissolved because trustees were not elected, etc.
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 1506. Stock of corporation is personal estate; transfer of.
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 1510. Dividends; capital stock, how reduced; liability of trustees.
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 1513. Books of corporation show what.
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 1515. Capital stock, how increased or diminished.
 1516. Notice of meeting called to increase or diminish stock.
 1517. Certificate to be made, filed, etc.; amount to be specified.
 1518. Power of trustees upon dissolution of corporation.
 1519. Dissolution proceedings; publication of notice; order.
 1520. Removing principal place of business; notice.
 1521. Provisions as to formation of, extend to water companies.
 1522. Water company may take and hold lands and water for its purposes.
 1523. Water company may first obtain right or privilege from city.

purpose of building, equipping and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others; Provided, That no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed; And provided further, That the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate, nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto.

Corporations to be formed under general laws. Const., art. XII, § 1; art. I, §§ 8, 12; art. II, § 28. Above provisions apply to water companies. § 1521.

§ 1498. Any two or more persons, who may desire to form a company for one or more of the purposes specified in the preceding section, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take acknowledgment of deeds, and file one of such articles in the office of the secretary of State, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, which shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in such certificate, and the name of the city, town, or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the

§ 1497. (As amended March 20, 1895.) Corporations for manufacturing, mining, milling, wharfing and docking, mechanical banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes for the transportation of wood and lumber, or for the

articles of incorporation, by supplemental articles, executed and filed the same as the original articles.

Domestic corporation must file list of its officers with county auditor. See Act of 1895, at p. 25. All laws relating to corporations may be amended or repealed. Const., art. XII, § 2. Articles of foreign corporation to be filed. § 1525. Principal place of business, how changed. § 1520. Franchise may be sold on execution. Act of 1897, at p. 25.

§ 1499. A copy of any certificate of incorporation filed in pursuance of this chapter, and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of State, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

§ 1500. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power,—

1. To sue and be sued in any court having competent jurisdiction;

All corporations may sue and be sued. Const., art. XII, § 5. Venue of actions against corporation. Code Civ. Pro., § 160. Service of summons upon. Act of 1893, at p. 24; § 1502, post. Corporation may confess judgment. Code Civ. Pro., § 415. Receivers. *Id.*, § 326. Actions for usurpation. *Id.*, §§ 679 et seq. Act in relation to garnishments. See p. 23.

[Where a complaint against a corporation does not allege its corporate character, objection thereof is waived by defendant's plea of counterclaim as though it were, in fact, a corporation. *Frost v. Lumber Co.*, 3 Wash. 241; s. c., 28 Pac. Rep. 354, 915. In an action upon contract against a corporation, an insufficient denial of the complaint admits that the person shown to have made the contract sued on was an authorized agent of the corporation. *Id.*

In an action against an insurance company to recover a premium paid, fact that defendant pleads an affirmative defense, setting up issuance of a policy by it in return for such premium, is sufficient admission of corporate capacity to waive allegation and proof by plaintiff on that point. *Sengfelder v. Ins. Co.*, 5 Wash. 121; s. c., 31 Pac. Rep. 428.

Evidence necessary to show corporate existence. *Bank v. Knipe*, 6 Wash. 348; s. c., 33 Pac. Rep. 834.

Principal and sureties giving bond for attachment of property of the corporation are thereby estopped to deny its corporate existence. *Crockery Co. v. Haley*, 6 Wash. 302; s. c., 33 Pac. Rep. 650.

Although steps have been taken to organize a corporation, the mere use of the corporate name, when there are no articles on file in any public office, will not constitute an estoppel to deny corporate existence. *Bash v. Mining Co.*, 7 Wash. 122; s. c., 34 Pac. Rep. 462.

A corporation cannot be rendered liable upon a contract between stockholders prior to incorporation, when there is no corporate act recognizing such liability. *Id.*

Rights of stockholders upon neglect of corporation to intervene in a suit in order to protect the stockholders' interests. *Bissell v. Taylor*, 7 Wash. 324; s. c., 35 Pac. Rep. 68.

Although a lease signed by all stockholders may not be technically a properly executed contract on part of corporation, yet it is admissible in evidence, in an action of conversion, to show that lessees were in possession and were operating a certain shingle mill for themselves, and not as agents of the corporation. *Fox v. Mfg. Co.*, 7 Wash. 391; s. c., 35 Pac. Rep. 126. Corporation not estopped to deny its liability, when. *Id.*

Plea of general denial does not admit corporate existence of plaintiff, where that is necessary allegation of the complaint. *Denver v. Spokane Falls*, 7 Wash. 226; s. c., 34 Pac. Rep. 926.

Where complaint alleges that the defendant is a corporation organized and existing under the laws of this State, the only answer of corporation is a general denial, it cannot afterwards complain that there was no affirmative proof of its corporate existence. *Garneau v. Mill Co.*, 8 Wash. 467; s. c., 36 Pac. Rep. 463.

A corporation cannot defend an action on a note executed in consideration of a loan made to it, on the ground of ultra vires. *Allen v. Light & Power Co.*, 13 Wash. 397; s. c., 43 Pac. Rep. 55.

Appointment of a receiver of a corporation held not to prevent its being sued. *Id.*

2. To make and use a common seal, and to alter the same at pleasure;

3. To purchase, hold, mortgage, sell, and convey real and personal property;

Certain corporations may hold property. § 1501. Water company may hold land. § 1522. Fraudulent transfers. See Receivers, Code Civ. Pro., § 326, note.

[Where a mortgage by a corporation was not authorized by its trustees, but was executed by its president and secretary, who were two of its three trustees, and the corporation received the benefits of the mortgage, the defects in its original execution will be regarded as cured by ratification. *Horton v. Long*, 2 Wash. 435; s. c., 27 Pac. Rep. 271.

An insolvent corporation may, in this State, make a common-law deed and assignment of its property to the trustees for benefit of its creditors, and such assignment will vest in the trustees the title to its real estate, so as to prevent its judgment creditors, who obtained judgment after the date of the deed, from subjecting such real estate to the payment of such judgments. *Nyman v. Berry*, 3 Wash. 734; s. c., 29 Pac. Rep. 557.

The occupant of premises under a lease from a corporation cannot question its power to execute the lease. *Furniture Co. v. Willbur*, 4 Wash. 644; s. c., 30 Pac. Rep. 665.

A corporation will be estopped from denying authority of its president and secretary to execute a note and mortgage, where it appears that the corporation was aware of the transaction from the first and never objected or sought to repudiate it. *Seal v. L. & I. Co.*, 5 Wash. 422; s. c., 32 Pac. Rep. 214. Subsequent ratification is equivalent to original authority. *Id.*

Where a corporation heavily indebted gives a mortgage to put itself in better shape for continuing business, such mortgage was held not to be given by an insolvent corporation for the purpose of hindering, delaying or defrauding creditors. *Vincent v. Mill Co.*, 7 Wash. 566; s. c., 35 Pac. Rep. 396.

A transfer of property by an insolvent corporation whereby preference is given to one creditor, while against equity and good conscience, is not such a fraud in fact as to afford ground for attachment of such property at instance of another creditor. *Holbrook v. Peters*, 8 Wash. 344; s. c., 36 Pac. Rep. 256.

A mortgage executed by one corporation to another is not to be deemed fraudulent solely because same individual is president of both corporations. *Roy v. Scott*, 11 Wash. 399; s. c., 39 Pac. Rep. 679. Where all stockholders acquiesce in the execution of mortgage upon its property, they are estopped from setting up invalidity of mortgage on ground that it was executed without corporate authority. *Id.* Where mortgage executed without corporate authority is valid as against the corporation and its stockholders, it is valid as against subsequent creditors and incumbrancers. *Id.*

An assignment of the claim made by president and general manager without being authorized by board of directors, is valid when subsequently ratified by all stockholders. *Glover v. Ins. Co.*, 11 Wash. 143; s. c., 39 Pac. Rep. 380.

An insolvent bank may transfer part of its property as security for loan by another bank of ready money, without rendering the transaction invalid as to creditors. *Roberts v. Bank*, 11 Wash. 550; s. c., 40 Pac. Rep. 225.

An insolvent corporation cannot make a voluntary preference. *Biddle Purchasing Co. v. Port Townsend Steel Wire & Nail Co.*, 48 Pac. Rep. 407.

A mortgage securing an antecedent loan, held void as a preference, though an understanding existed when the loan was made that a mortgage would be given if the loan was not speedily repaid. *Id.*

Mortgage by insolvent corporation for the benefit of one creditor, held fraudulent. *Cook v. Moody*, 50 Pac. Rep. 1020.

A lumber company cannot, as against creditors, mortgage its property without consideration, to secure the individual debt of one of its stockholders. *Washington Mill Co. v. Sprague Lumber Co.*, 52 Pac. Rep. 1067.]

4. To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation;

Domestic corporation must file list of officers with auditor. Act of 1895, at p. 25. Foreign must file appointment of agent. § 1526.

[An allegation by a boom company, in a mandamus proceeding against another boom company, that it had a contract with a certain individual for driving his logs, is a sufficient admission of the ratification by the corporation of the act of one assumed to be its agent in the making of such contract. *Tingley v. Boom Co.*, 5 Wash. 644; s. c., 32 Pac. Rep. 737; 33 id. 1055.

Where a corporation allows a manager a large measure of control over all its business transactions, it must be held responsible for his acts in the name of the corporation, until it has been affirmatively shown that such acts were unauthorized. *Carrigan v. Imp. Co.*, 6 Wash. 590; s. c., 34 Pac. Rep. 148.

A corporation is estopped from denying authority of officers to do certain business, when all its business, including business of the kind in question, had been for a long time transacted by such officers, no fault ever being found with the actions of such officers in so conducting the business. *Duggan v. Boom Co.*, 6 Wash. 593; s. c., 34 Pac. Rep. 157.

It is unnecessary that the attorney verifying a mechanic's lien in this State for an insolvent corporation should be specially authorized by appointment and the appointment filed in the office of the secretary of State. *Mfg. Co. v. Hotel Co.*, 6 Wash. 122; s. c., 32 Pac. Rep. 1073.

A corporation is not bound by negotiable paper by its agent, unless he has express authority to issue the paper, or an implied general authority arising from frequent exercise of the power, followed by the ratification of the corporation. *Ellwell v. R. R. Co.*, 7 Wash. 487; s. c., 35 Pac. Rep. 376.

Fact that boards of directors of two corporations enter into agreement that certain transactions are to be carried on between them by a common agent were identical, would not render the transactions void, but merely voidable, and capable of ratification. *Roberts v. Bank*, 11 Wash. 550; s. c., 40 Pac. Rep. 225.]

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will; except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders, as hereinafter provided;

See §§ 1502, 1503.

6. To make by-laws not inconsistent with the laws of this State or the United States;

By-laws shall provide for elections of trustees. § 1502. And for transfer of shares. § 1506.

[A by-law in relation to dividends, held, in effect, an appropriation of the net earnings. *Seattle Trust Co. v. Pitner*, 51 Pac. Rep. 1048.]

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company as expressed in the articles of incorporation.

Transfer of shares. § 1506. See next section. Powers to be exercised by trustees. § 1502.

[Authority of president and secretary to indorse a transfer of negotiable paper. *Blue v. McCabe*, 5 Wash. 125; s. c., 31 Pac. Rep. 431.

Although a contract may not have been properly authorized by its board of trustees, yet, where the corporation continues to receive benefits accruing from such contract, it is estopped to deny the validity thereof. *Leslie v. Wilshire*, 6 Wash. 282; s. c., 33 Pac. Rep. 505.

Where a corporation has received and retained benefits of a transaction it cannot set up the plea of ultra vires. *Tootle v. Bank*, 6 Wash. 181; s. c., 33 Pac. Rep. 345.

Although a note of a corporation may have been good without any consideration, a bona fide purchaser thereof for value, to whom certain shares of stock of the corporation were assigned to secure its payment, is a corporation creditor. *Stewart v. Gould*, 8 Wash. 367; s. c., 36 Pac. Rep. 277.

Estoppel of purchaser of stock of a corporation to deny authority of corporate officer to issue certain notes, or to allege that the transaction was ultra vires. *Miller v. Ry. Co.*, 11 Wash. 414; s. c., 39 Pac. Rep. 673.

A corporation cannot defend an action on a note, executed in consideration of a loan made to it, on the ground of ultra vires. *Allen v. Light & Power Co.*, 13 Wash. 307; s. c., 43 Pac. Rep. 55.

A lumber company held to have incidental power to become surety on director's bonds, in the absence of any express statutory prohibition. *Wheeler v. Land Co.*, 14 Wash. 630; s. c., 45 Pac. Rep. 316. And where the directors knew that the company was about to sign a bond as such surety, and made no objection thereto, it will be supposed that they had consented. *Id.*

An insolvent corporation in this State may make a common-law assignment, although it cannot make a statutory assignment. *Cerf v. Wallace*, 14 Wash. 249; s. c., 44 Pac. Rep. 264.

Where the board of directors knew that the company was about to sign a bond as surety, and made no objection thereto, it will be presumed that they consented. *Wheeler v. Land Co.*, 45 Pac. Rep. 316.

Every person dealing with a corporation is charged with notice of its powers. *Washington Mill Co. v. Sprague Lumber Co.*, 52 Pac. Rep. 1067.

Where a corporation enters into a contract which it has no power to make, the contract is void as to creditors, although assented to by all the stockholders. *Id.*]

§ 1501. All private corporations incorporated by the legislative assembly of the Territory of Washington, prior to the tenth day of June, eighteen hundred and seventy-two, other than for religious purposes, be and they are hereby authorized to hold, acquire, own, and possess real and personal property to the extent and to such an amount as to said corporations may seem meet, anything in the acts incorporating said private corporations to the contrary notwithstanding.

General powers enumerated. § 1500.

§ 1502. (As amended March 8, 1895.) The corporate powers of a corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and at least one of whom shall be a resident of the State of Washington, and a majority of them citizens of the United States, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as provided by the laws of this State, and who shall, after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place, within the State, and upon such notice and in such manner, as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own, or represent by proxy, shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: Provided, That nothing herein contained shall prevent any corporation, by their by-laws, limiting such bona fide shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessible stock, disregarding the number of shares of stock he may own. It shall be competent, at any time, for two-thirds the stockholders of any corporation organized under this chapter to expel any trustee from office, and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing a successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation or otherwise, except

by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees. Every such corporation shall at all times keep at its principal place of business in this State an officer or officers, agent or agents, upon whom service or legal process may be made, in conformity with the law: Provided, That service of such process may be made at any time upon any resident trustee of such corporation.

Two-thirds vote required to expel trustee. § 1500 (5). Failure to elect, not to dissolve. § 1503. Decision of majority of quorum necessary. § 1504. Executor may vote as stockholder, when. § 1508. Pledge of stock. § 1509. Liability of trustees for illegal dividends. § 1510. Power of trustees on dissolution. § 1518. List of officers must be filed with auditor. Act of 1895, at p. 25. First meeting of trustees. § 1505.

[In absence of statute to contrary, a corporation can contract with one of its trustees, and he can treat with such corporation respecting said contract through its board of trustees, of which he is a member, and be present at their meeting for that purpose, so long as his conduct is open and fair. *Budd v. P. & P. Co.*, 2 Wash. T. R. 347; s. c., 7 Pac. Rep. 896. Whether under the circumstances the transaction was fraudulent would be a question of fact to be established before the jury by the party alleging the fraud. *Id.*

Unless there is some express provision therefor in articles of agreement or by-laws, or some other authority than the actions of trustees themselves, a trustee cannot recover pay for services rendered the corporation within the line of his regular duties as such trustee. *Burns v. L. & I. Co.*, 4 Wash. 558; s. c., 30 Pac. Rep. 668, 709.

Where the directors knew that the company was about to sign a bond as surety, and made no objection thereto, it will be presumed that they consented. *Wheeler v. Land Co.*, 45 Pac. Rep. 316.]

§ 1503. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not, for that reason, be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected and qualified.

See § 1502.

§ 1504. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

See § 1502.

§ 1505. The first meeting of the trustees shall be called by a notice, signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be deliv-

Stock; transfer; subscriptions — Gen. Stat., §§ 1506, 1507.

ered personally to each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in this State.

[Fact that same person acted as chairman, and as president of a meeting of board of trustees of a corporation, and also as secretary thereof, would not of itself invalidate its proceedings. *Budd v. P. & P. Co.*, 2 Wash. T. R. 347; s. c., 7 Pac. Rep. 896.

It is not essential to legality of unstated meeting of board of trustees that proof of the notice of such meeting be spread upon its records. Such proof may be supplied aliunde. Until proof to the contrary appear, meeting will be presumed to have been regularly called. *Id.*

The fact of a trustee of a corporation, who had a demand against it, being present at a meeting of the board of trustees which gave the vote of the corporation to him in payment, would not, of itself, invalidate the vote. *Id.*

In addition to what is disclosed by the minutes, it is competent, where it becomes essential, to show all that was said and done in relation to the matter at the meeting of the board of trustees. *Tibbals v. Water Co.*, 10 Wash. 329; s. c., 38 Pac. Rep. 1120.]

§ 1506. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

Taxation of shares of stock. See Revenue Act of 1897, at p. 27. Pledge of stock. § 1509.

[Though by-laws of a corporation require entry of transfers of shares on stock-ledger, if none is kept and such a transfer is entered according to custom of company on the subscription-list, an assignment is made indorsed on the shares themselves, and a new certificate is issued to the purchaser by the company, the latter cannot deny the validity of the transfer. *Stewart v. P. & P. Co.*, 1 Wash. 521; s. c., 20 Pac. Rep. 605.

Purchase of shares, although no registration has been made thereof on books of corporation, will pass title thereto to transferee as against a subsequent purchaser on execution sale against the transferor. *Bank v. Fuel Co.*, 6 Wash. 597; s. c., 34 Pac. Rep. 155.

Under above section, the interest of the pledgee in shares of stock cannot be divested by judicial sale against the owner thereof, although such shares have not been transferred to the pledgee on the books. *Id.*

An action for damages for value of stock in a corporation based on refusal to transfer, cannot be maintained by a stockholder or his assigns against another corporation, which has succeeded to all property, rights and interests of the corporation which issued the stock. *Huggins v. Brewing Co.*, 10 Wash. 579; s. c., 39 Pac. Rep. 152.]

§ 1507. The stockholders of any corporation formed under this chapter may, in the by-laws of the company, prescribe the times, manner, and amounts in which payments

of the sums subscribed by them, respectively, shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stockholders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in said county then in the newspaper nearest the said principal place of business in the State. If after such notice has been given, any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her, or them. The sale of said shares shall be made as prescribed in the by-laws by the company, but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder; Provided, That the amount of the capital stock of any bank incorporated under this act shall not be less than twenty-five thousand dollars, to be divided into shares of one hundred dollars each, all of which shares shall be subscribed, and three-fifths of such capital stock shall be paid in before commencement of business, the remainder to be subject to the call of the trustees; and it shall be the duty of the directors of any such bank to file with their articles of incorporation their affidavit that three-fifths of the capital stock of such bank has been actually paid.

Regulations as to issue of stock. Const., art. XII, § 6. Liability of stockholders. *Id.*, § 4. Stock is personal estate. § 1506. Capital stock, how increased or diminished. §§ 1515-1517. Certain corporations may issue bonds. Act of 1893, at p. 24.

[Effect of contract of corporation to repurchase its stock. *Yeaton v. Refining Co.*, 4 Wash. 183; s. c., 29 Pac. Rep. 1051.

Power to purchase and sell its own stock; for purpose of upholding contract, a foreign corporation is presumed to possess such power. *Id.*

A corporation in this State cannot enforce subscriptions to its stock until the full capital stock has been subscribed for. *Hotel Co. v. Schram*, 6 Wash. 134; s. c., 32 Pac. Rep. 1002. And one corporation cannot subscribe to stock of another. *Id.*

A subscriber to stock does not waive any right to object to validity of other subscribers, or to dispute authority of the corporation to sue, merely from the fact that he made payment of

Subscriptions; dividends; liability of stockholders — Gen. Stat., §§ 1508-1511.

such subscription, when he has no knowledge as to the validity of bona fide subscriptions. *Hotel Co. v. Gilmore*, 6 Wash. 152; s. c., 32 Pac. Rep. 1001.

Subscriptions to capital stock may be enforced by the corporation by suit as a contract for the payment of money. *R. R. Co. v. Ouellette*, 7 Wash. 265; s. c., 34 Pac. Rep. 929.

Presumption is, that a corporation in bringing suit on stock subscriptions has acted regularly according to its by-laws. If there is any by-law which renders their action irregular, it is a matter of defense which should be pleaded. *Id.*

Receiver of insolvent corporation may bring a separate suit against a stockholder to recover any sum due on his stock. *Elderkin v. Peterson*, 8 Wash. 674; s. c., 36 Pac. Rep. 1089. In such action, defendant cannot question regularity of appointment of receiver nor judgment of court as to necessity of collecting the unpaid subscriptions. *Id.* In an action by receiver of an insolvent corporation to recover upon unpaid subscriptions to stock, the complaint does not state a cause of action, under above section, when it fails to allege that defendant had notice of the call for assessments upon his stock, made by the receiver under order of the court. *Id.* Several charges of the court to jury under above section held to be erroneous. *Id.*

Right of receiver to enforce subscription. *Cole v. R. R. Co.*, 9 Wash. 487; s. c., 37 Pac. Rep. 700.

Action to recover on subscription made by an individual "as trustee" may be maintained against real parties in interest, when. *Id.*

Subscribers to stock not liable thereon, when corporation has begun business before capital stock is all subscribed, unless the acts and conduct of subscribers are such as to establish waiver on their part of the conditions precedent to liability. *Birge v. Browning*, 11 Wash. 249; s. c., 39 Pac. Rep. 643.

Partial payments upon subscriptions will not establish such waiver when made without knowledge that entire capital stock has not been subscribed. *Id.*

It is no defense to an action on a subscription that no call had been made prior to the assignment by the corporation. *McKay v. Ellwood*, 12 Wash. 579; s. c., 41 Pac. Rep. 919. Nor that the capital stock was not all subscribed. *Id.* In an action by an assignee to recover on a subscription it is not necessary to allege that all the capital stock has been subscribed. *Id.*

Where the stock was issued honestly for property and franchises, the stockholders are not liable to creditors on the ground of an overvaluation of the property. *Turner v. Bailey*, 12 Wash. 634; s. c., 42 Pac. Rep. 115.

A stockholder held estopped to deny the delivery of a note in renewal of a firm note given for a stock subscription. *Hardin v. Sweeney*, 14 Wash. 129; s. c., 44 Pac. Rep. 138.

Evidence held to show that a subscription for corporate stock was fraudulent. *Manhattan Trust Co. v. Seattle Coal & Iron Co.*, 48 Pac. Rep. 333.

In an action for unpaid assessment on corporate stock, plaintiff need not allege the legal organization. *Hardin v. Mullin*, 48 Pac. Rep. 349.

A corporation may legally receive its own stock in payment of a debt due it, when taken in good faith to protect it from loss. *Barto v. Nix*, 46 Pac. Rep. 1033.

A director of an insolvent bank cannot set up in an action to collect payment for stock held by him, a secret agreement between him and the bank that he should not pay for the stock, but hold it for the corporation. *Id.*

At common law a corporation has no lien on the stock for debts of a stockholder. *Clise Inv. Co. v. Bank*, 50 Pac. Rep. 575.

A corporation has no lien on the stock for unpaid assessments under § 1507. *Id.* And cannot sell stock to pay such assessments where the sale is not provided for by the by-laws. *Id.*

Interest held not recoverable on a note given for a stock subscription. *Seattle Trust Co. v. Pitner*, 51 Pac. Rep. 1048.]

§ 1508. Whenever any stock is held by a person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

See § 1512.

§ 1509. Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings, and vote as a stockholder.

[Notwithstanding above section, a stockholder, after pledging any or all of his stock, would not be authorized to transfer or dispose of the property of corporation to secure an individual indebtedness to prejudice of corporation creditors. *Stewart v. Gould*, 8 Wash. 367; s. c., 36 Pac. Rep. 277.]

§ 1510. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation, and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out; Provided, That this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

[A by-law in relation to dividends held, in effect, an appropriation of the net earnings. *Seattle Trust Co. v. Pitner*, 51 Pac. Rep. 1048.]

§ 1511. No corporation organized under this chapter shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidence of debt for circulation as money, except bonds by railroad companies, which shall at no time exceed double the amount of paid-up stock issued by said company. Each and every stockholder shall be personally liable to the creditors of the company, to the amount of what remains unpaid upon his subscription to the capital stock, and not otherwise; Provided, That the stockholders of every bank incorporated under

this act or the territory of Washington shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares; and all such banking corporations shall file, on the first Monday in June, each year, with the State auditor, a report sworn to by its president, vice-president, or cashier, of the resources and liabilities, stating the amount of deposits, the aggregate of loans, and the amount upon each class of securities, the names and residence of the shareholders and number of their shares, the directors or officer for the time being, and any other matters affecting the safety of their deposits or the interests of their creditors; and such banking corporations shall have power to exercise, by its board of trustees, or duly authorized officers or agents, all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits, buying and selling, exchange, coin and bullion, by loaning money on real estate or personal security; to accept and execute all trusts, fiduciary or otherwise, as may be committed to such bank or corporation, by any person, persons, or corporation, or by the order or direction of any courts; and may do any other business pertaining to banking; Provided further, That the provisions of this section shall not apply to the debentures or bonds of any company duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon the unincumbered real estate worth at least twice the amount loaned thereon; Provided further, however, That such issue of debentures or bonds shall in no case exceed ten times the capital stock of the issuing corporation.

Only lawful United States money to be circulated. Const., art. XII, § 11. Certain corporations may issue bonds. Act of 1893, at p. 24. Liability of stockholders. Const., art. XII, § 4. and note.

[Subscriber to stock who has in good faith transferred his shares, which transfer has been accepted by corporation before an assessment is made, is not liable for unpaid subscriptions, but the transferee is. *Stewart v. P. & P. Co.*, 1 Wash. 521; s. c., 20 Pac. Rep. 605.]

§ 1512. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security or in pledge,

shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, or guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name.

See § 1508.

§ 1513. It shall be the duty of the trustees of every company incorporated under this charter to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sunday and legal holidays, shall be open for the inspection of stockholders and creditors of the company, at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having the charge of such book a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company; and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders.

See § 1514.

§ 1514. If at any time the clerk or other officer having charge of such book shall make any false entry or neglect to make any proper entry therein, or having charge of any papers of the company shall refuse or neglect to exhibit the same, or allow the same to be inspected or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred dollars or more than one thousand dollars, and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the su-

perior court of the county in which the principal place of business of the corporation is located.

See § 1513.

§ 1515. Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

See § 1507, and note.

§ 1516. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called, by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located, or if no newspaper is published in the county, then the newspaper nearest thereto in the State, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of the stock shall be necessary to increase or diminish the amount of capital stock.

§ 1517. If, at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, and signed, and verified, by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by section fourteen hundred and ninety-eight of this volume of General Statutes, and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

§ 1518. Upon the dissolution of any corporation formed under the provisions of this chapter, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and

pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

§ 1519. Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the superior judge of the county in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a meeting of the stockholders, called for the purpose, it was decided, by a vote of two-thirds of all the stockholders, to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the State. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and be satisfied that the corporation has taken necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Appointment of receiver. Code Civ. Proc., § 326.
Compulsory dissolution. Id., § 688.

§ 1520. Any corporation desiring at any time to remove its principal place of business into some other county in the State shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of any corporation hereafter formed under this chapter shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation; Provided, That within three months of the passage of this chapter, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town, or locality and county where its principal place of business shall be located. On

Water-rights; foreign corporation — Gen. Stat., §§ 1521-1524.

compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality and county in the State.

List of officers must be filed with county auditor at principal place of business. See Act of 1895, at p. 25.

§ 1521. The provisions of this chapter shall extend to and apply to all associations already formed under any law of this State hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this State, or the inhabitants thereof, with pure and fresh water.

See Const., art. XXI, § 1.

§ 1522. Such water companies, incorporated for the purposes specified in the preceding section, shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water, upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way by laying pipes and aqueducts for the use of the company, when the parties cannot agree, shall, so far as the same be applicable, be as prescribed in chapter one hundred and eighty-seven; Provided, That nothing therein contained shall be so construed as to authorize the appropriation of water belonging to any person, unless the owner thereof shall refuse to supply said town or city with water, after being requested so to do by the town board or city council.

[Where proprietors of a ditch have transferred the right to control the water for the individual use of a corporation created for and engaged in the business of farming and irrigation, the corporation is a trustee of an express trust, and may sue as such to enforce the rights of such proprietors to the water appropriated. *Thorpe v. Ditch Co.*, 1 Wash. 566; s. c., 20 Pac. Rep. 588.]

§ 1523. Water companies hereafter incorporating, under the provisions of this chapter, must first obtain from the corporate authorities of a city or town intended to be supplied with water the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises.

CHAPTER II.

Of Foreign Corporations.

Sec. 1524. Power of, to do business in this State.

1525. Certified copy of charter, etc., to be filed and recorded.

1526. Appointment of agent to be filed and recorded.

Sec. 1527. Not to file certified copies or have them recorded, when.

1528. Assessors to ascertain names of corporations, agents, etc.

1529. County auditors to report names of corporations, agents, etc.

1530. Fees allowed for recording.

1531. Agent is guilty of misdemeanor when; how punished.

1532. Assessor is guilty of misdemeanor when; how punished.

§ 1524. Any corporation incorporated under the laws of any State or territory in the United States, or of any foreign country, State, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this State, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise do (due) to or loans made by such foreign corporations within the boundaries of this State, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this State in the same manner and to the same extent as corporations incorporated and organized under the laws of this State are authorized to do under the laws of this State, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter; Provided, however, That this chapter shall not be (so) construed as to allow such foreign corporations to transact business within the State on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this State; And provided further, That no corporation, the majority of the capital stock of which is owned by aliens other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this State other than lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary lands for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, excepting where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts; Provided further, That no foreign corporation which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein in this State;

but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.

See Constitution, as to foreign corporations, Art. XII, § 7.

[A foreign corporation is presumed, for purposes of upholding a contract, to possess power to purchase and sell its own stock. *Yeaton v. Refining Co.*, 4 Wash. 183; s. c., 20 Pac. Rep. 1051.

Under this chapter a foreign corporation organizer prior to its enactment (March 28, 1890), does not fall within the prohibition against such corporations transacting business of buying and selling land, or dealing in real estate, and carrying on the brokerage business within this State. *Realty Co. v. Appolonio*, 5 Wash. 437; s. c., 32 Pac. Rep. 219.

Where a foreign fire insurance company has been garnished in another State upon its indebtedness to citizens of this State upon its policy of insurance, such fact is a good defense to an action in this State against the corporation. *Neufelder v. Ins. Co.*, 6 Wash. 336; s. c., 33 Pac. Rep. 870.]

§ 1525. Such corporation shall cause to be filed and recorded in the office of the secretary of State a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the officer who is the custodian of the same according to the laws of the State or territory, country, or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to the laws of such State, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of State, or of the territory, in case of corporations within the United States, and the consul-general, consul, vice-consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate.

Fees to be paid to secretary of State. See Act of 1897, at p. 26.

[In an action by a foreign corporation, a copy of its articles of incorporation and of the appointment of an agent certified by the secretary of State as being of record in his office are prima facie proof of the organization of such corporation, and of its right to transact business in this State. *Knapp v. Strand*, 4 Wash. 686; s. c., 30 Pac. Rep. 1063.

Failure of a foreign corporation to file certified copy of its articles in office of secretary of State

and appoint an agent to represent it at principal place of business, as required by this chapter, does not render void the contract of such corporation made in this State. *Foundry Co. v. Augustine*, 5 Wash. 67; s. c., 31 Pac. Rep. 327.

Although a deed to a foreign corporation may have been executed before the corporation had complied with the law requiring it to file its articles of incorporation, etc., yet the deed is not void if it was not delivered until after the filing of such articles. *Sayward v. Gardner*, 5 Wash. 247; s. c., 31 Pac. Rep. 761; 33 id. 389.

The filing of articles of incorporation by a foreign corporation, and appointment of an agent after the filing of a lien notice, or before suit to foreclose same, is sufficient compliance with law relating to foreign corporations doing business within this State. *Miz. Co. v. Hotel Co.*, 6 Wash. 122; s. c., 32 Pac. Rep. 1075.

Contracts entered into with a foreign corporation before it is authorized to commence business must be held binding. *Electric Co. v. Nav. Co.*, 8 Wash. 379; s. c., 36 Pac. Rep. 269. And cannot be repudiated on account of its non-compliance with above law. *Agri. Co. v. Strand*, 8 Wash. 647; s. c., 36 Pac. Rep. 682.

Where a penalty is attached to violation of a statute requiring foreign corporations to file copies of their charters, etc., and there is no provision imposing the penalty that contracts not complying with the law shall be void, and party contracting with such corporation is estopped from pleading its want of compliance with the statute. *Engine Co. v. Mt. Vernon*, 9 Wash. 142; s. c., 37 Pac. Rep. 287; 38 id. 80.]

§ 1526. Such corporations shall also constitute and appoint an agent, who shall reside at the place in the State where the principal business of the corporation is to be carried on, to be designated as herein-after required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence, and the place where the principal business of such corporation is to be carried on, and shall authorize such agent to accept such service of process in any action or suit pertaining to the property, business, or transactions of such corporation within this State in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of State by such corporation, and shall be there recorded, and such corporation shall have and keep continually some resident agent, empowered as aforesaid, during all the time such corporation shall conduct or carry on any business within this State, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent, or its principal place of business from time to time by filing and recording with the secretary of State a new appointment, stating the change of such agent or the change in its principal place of business.

[Where the right to do business in the State is conceded to a foreign corporation by statute,

wherein there is a condition that it shall appoint an attorney upon whom service in any proceedings in courts of the State may be made, the corporation becomes a resident of the State, and subject to garnishment proceedings. *Fittenhofer v. Clothing Co.*, 4 Wash. 519; s. c., 30 Pac. Rep. 660. What is sufficient service of notice of garnishment on foreign corporations. *Id.*]

§ 1527. No corporation which has heretofore complied with the laws of the State or Territory of Washington hitherto existing, regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the State as heretofore required, shall be required to file or record, or cause to be recorded, the certified copies required by this act, or to execute or file for record, or cause to be recorded, a new appointment of agent as herein required.

§ 1528. It shall be the duty of each and every county assessor in this State to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall, within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county a full and complete list of the names of such corporations doing business in his county, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents.

§ 1529. It shall be the duty of each and every county auditor in this State to make out and transmit to the secretary of State, within thirty days after the receipt by him from such county assessor of the lists provided in section fifteen hundred and twenty-eight of this volume of General Statutes, a full, true, and concise statement of the names of such corporations, the place of business, the nature of business conducted by such corporations, and the name of each and every agent of each of such corporations, if any there be, and the places of residence of such agents.

§ 1530. The fees for recording, under the provisions of this act, shall be the same as are allowed by law to the secretary of State for certified copies of papers on file in his office.

§ 1531. Any agent of any foreign corporation, conducting or carrying on business within the limits of this State, for and in the name of such corporation, contrary to any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a

term not exceeding three months, or by both such fine and imprisonment.

§ 1532. Any county assessor failing to make out and deliver to the county auditor of his county a list, within the time and in the manner provided in section fifteen hundred and twenty-eight of this volume of General Statutes, and any county auditor failing to make out and transmit to the secretary of State a statement, within the time and in the manner provided in section fifteen hundred and twenty-nine of this volume of General Statutes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars.

CHAPTER VI.

Provisions Specially Applicable to Mining and Manufacturing Corporations.

Sec. 1588. No subscription to stock of mining corporations necessary.

1589. Right to appropriate water, and to build dams, reservoirs, etc.

§ 1588. In incorporations already formed, or which may hereafter be formed under this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any claim in any mining claim in this State, for the working and development of which such corporation shall be or has been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust, or other instrument vest or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; **Provided**, That the greater portion of said amount of capital stock shall have been so subscribed; And provided further, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract.

§ 1589. Any person or persons, or company now incorporated, or that may here-

Actions; verification; attachment — Code Civ. Pro., §§ 160, 203, 288, 289.

after become incorporated under the laws of this State, for the purpose of mining or manufacturing, shall have the right to purchase or appropriate and take possession of and divert from its natural channel, and use and hold the waters of any river, creek, or stream in this State that may be required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams, canals, reservoirs, ditches, pipes, flumes, and aqueducts suitable and necessary for the controlling, directing, and running such waters to their mines or manufacturing establishments of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes; Provided, That no such appropriation or diversion of the waters of any such river,

creek, or stream from its natural channel, nor shall any such dam, canal, reservoir, ditch, pipe, flume or aqueduct be constructed, to the detriment of any person or persons, corporation or corporations, occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume, or aqueduct, or of the owners of the lands through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoirs, ditch, pipe, flume, or aqueduct may pass through or over, or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor.

CODE OF CIVIL PROCEDURE.

TITLE V. OF THE COMMENCEMENT OF ACTIONS, AND OF PLEADINGS THEREIN.

Ch. 3. Of the place of trial.
6. Of the verification of pleadings.

CHAPTER III.

Of the Place of Trial.

Sec. 160. Venue of actions against corporations.

§ 160. An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in this Code.

Corporation may sue and be sued. See Statutes, § 1500, subd. 1, note.

[Where an action is brought against a corporation in wrong county, court has no jurisdiction to render judgment. Such actions are governed entirely by above provision. *McMaster v. Thresher Co.*, 10 Wash. 147; s. c., 38 Pac. Rep. 760.]

CHAPTER VI.

Of the Verification of Pleadings.

Sec. 203. Subscription and verification of pleadings.

§ 203. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. * * * When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice might be made:
* * *

TITLE VI. OF PROVISIONAL REMEDIES.

Ch. 4. Of attachment of property.
5. Of receivers.

CHAPTER IV.

Of Attachment of Property.

Sec. 288. Plaintiff may have attachment after commencing action.

289. When and by whom the writ is issued; affidavit for.

§ 288. The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover.

Franchise may be sold upon execution. See Act of 1897, at pp. 25, 26.

§ 289. The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or some one in his behalf, shall make and file with such clerk an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets), and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and either,—

1. That the defendant is a foreign corporation.

* * * * *

Receivers; actions to prevent usurpation — Code Civ. Pro., §§ 326, 415, 679.

CHAPTER V.

Of Receivers.

Sec. 326. In what cases a receiver may be appointed.

§ 326. A receiver may be appointed by the court in the following cases:—

* * * * *

5. When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

See Statutes, § 1500(3), note, as to fraudulent transfers and preferences by insolvent corporations.

[A voluntary preference by an insolvent corporation is void. *Thompson v. Lumber Co.*, 4 Wash. 600; s. c., 30 Pac. Rep. 741; 31 *id.* 25.]

Where a receiver has been appointed for an insolvent corporation, he is a trustee for the corporation and all of its creditors, including those not intervening in the action wherein he was appointed. *Id.*

Fact that a creditor is a stockholder and director in an insolvent corporation does not estop him from participating in the fund in the receiver's hands. *Id.*

Where a court of equity has regularly secured jurisdiction in a suit against an insolvent corporation, and has appointed a receiver therefor, an application by party for permission to sue a receiver is addressed to the sound discretion of the court. *Meeker v. Sprague*, 5 Wash. 244; s. c., 31 Pac. Rep. 628.

Court will decline to appoint receiver of bank corporation on ground of fraudulent transactions, when. *Roberts v. Bank*, 9 Wash. 12; s. c., 37 Pac. Rep. 26.

Sufficiency of complaint by judgment creditor asking for appointment of receiver for an insolvent corporation. *Whitehouse v. R. R. Co.*, 9 Wash. 558; s. c., 38 Pac. Rep. 152.

Where a corporation has conducted a profitable business it is not chargeable with insolvency from mere fact that its indebtedness is in excess of its assets. *Brooks v. Mfg. Co.*, 9 Wash. 80; s. c., 37 Pac. Rep. 284.

The stock and property of an insolvent corporation or one which is practically in that condition, is a trust fund for payment of its debts, and such a corporation has no right to prefer a portion of its creditors to the exclusion of others. *Conover v. Hull*, 10 Wash. 673; s. c., 39 Pac. Rep. 166.

Fact that assets of a corporation are made to exceed its liabilities by computing its bank account and bills receivable at their face value, when their actual value is really less, is not sufficient to negative the charge that corporation is insolvent. *Id.*

The transfer by a corporation, which was insolvent and practically out of business, of a portion of its assets to certain creditors, who were either officers of the corporation or intimately connected therewith, was such a preference by an insolvent corporation as to constitute a fraudulent conveyance and warrant recovery by receiver of such corporation of the property so transferred. *Smith v. Hopkins*, 10 Wash. 77; s. c., 38 Pac. Rep. 854.

The insolvency of a corporation at time of making a sale does not, from that fact alone, constitute a fraudulent transfer. *Mayer v. Woolery*, 10 Wash. 354; s. c., 39 Pac. Rep. 135.

Action of the court in placing an insolvent company in the hands of receiver, even if erroneous, cannot be attacked collaterally. *Smith v. Hopkins*, *supra*.

But slight testimony is required to show *prima facie* acts, where it is sought to prove the small value of assets of an insolvent corporation, for which appointment of a receiver is asked. *Id.*

The stock and property of a corporation furnishes a trust fund for all its creditors; a voluntary preference in case of insolvency is void. *Conover v. Hull*, *supra*.

Appointment of a receiver held not to prevent a corporation's being sued. *Allen v. Light & Power Co.*, 13 Wash. 307; s. c., 43 Pac. Rep. 55.

On insolvency and appointment of a receiver, the liability of stockholders is to be enforced at the suit of the receiver. *Wilson v. Book*, 43 Pac. Rep. 939.

Under above section, a receiver may be appointed for an insolvent corporation, though it has made a voluntary assignment. *Olson v. Bank*, 45 Pac. Rep. 734.

An insolvent corporation in this State may make a common-law assignment, although it cannot make a statutory assignment. *Cert v. Wallace*, 14 Wash. 249; s. c., 44 Pac. Rep. 264.

As the representative of creditors, the receiver of an insolvent corporation may sue to set aside transfers of its property in fraud of creditors. *Washington Mill Co. v. Sprague Lumber Co.*, 52 Pac. Rep. 1067.]

TITLE VII. OF ISSUES, TRIALS AND JUDGMENT.

CHAPTER XI.

Of Judgment by Confession.

Sec. 415. How corporations may confess judgment.

§ 415. When the action is against * * * a private corporation * * * the confession shall be made by the person who, at the time, sustains the relation to such * * * corporation, * * * as would authorize the service of a notice upon him: * * *

See General Statutes, § 1500 (1), note.

[Judgments obtained by collusion between certain creditors and the corporation are to be regarded as preference over other creditors. *Conover v. Hull*, 10 Wash. 673; s. c., 39 Pac. Rep. 166.]

TITLE IX. OF ACTIONS IN PARTICULAR CASES.

CHAPTER X.

Of Actions to Prevent Usurpation of Franchise.

Sec. 679. Against whom, and in what cases, action may be commenced by information.

680. Information to be filed by prosecuting attorney.

681. Of what the information consists.

683. Appearance and pleading same as in other actions.

688. Consequence of judgment against usurper.

689. Proceedings against corporations.

691. Prosecuting attorney not liable for costs; relator liable.

§ 679. An information may be filed against any person or corporation in the following cases:—

1. When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the State, or any office in any corporation created by the authority of the State;

3. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise;

4. When any association or number of persons shall act within this State as a corporation, without being legally incorporated;

5. Or where any corporation do or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law.

§ 680. The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise, or corporation which is the subject of the information.

§ 681. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

§ 683. Whenever any information is filed, a notice signed by the relator shall be served and returned as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceeding be had as in other cases.

§ 688. Whenever any defendant shall be found guilty of any usurpation of or intrusion into or unlawfully exercising any office or franchise within this State, or any office in any corporation created by the authority of this State, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the pro-

visions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise, or corporate rights, and in case of corporations, that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

§ 689. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

§ 691. When an information is filed by the prosecuting attorney, he shall not be liable for the costs, but when it is filed upon the relation of a private person, such person shall be liable for costs unless the same are adjudged against the defendant.

TITLE XVIII. OF CONSTRUCTION.

Sec. 1709. "Person" defined.

§ 1709. The term "person" may be construed to include * * * any public or private corporation, as well as an individual.

See Revenue Act of 1897, at p. 26. Corporation defined. Const., art. XII, § 5.

LEGISLATIVE ACTS RELATING TO CORPORATIONS PASSED SUBSEQUENTLY TO 1891.

1. In relation to garnishments.
2. Authorizing certain private corporations to issue bonds.
3. To provide for manner of commencing civil actions in the superior court.
4. Declaring it unlawful to employ an armed body of men, and providing punishment therefor.
5. Requiring domestic corporations to file a list of their officers with county auditor.
6. Subjecting franchises to sale upon execution.
7. Fixing fees to be paid by corporations to the secretary of State.
8. To provide for the assessment and collection of taxes.

Act 1.

AN ACT in relation to garnishments.

Be It enacted by the legislature of the State of Washington:

§ 5. Where it appears from the plaintiff's affidavit that the garnishee is in an incor-

porated or joint-stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served.

§ 9. From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee if an incorporated or joint-stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, effects, shares, or

Garnishments; bonds; service of summons — Acts, March 8, 10 and 15, 1893.

interest as may be necessary to satisfy the plaintiff's demand.

§ 11. * * * When the garnishee is in an incorporated or joint-stock company in which the defendant is alleged to be the owner of shares of stock or interested therein, if it shall further appear from such answer that the defendant is not, and was not when the writ was served, the owner of any such shares or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, and within the time hereinafter provided, the court shall enter judgment discharging the garnishee.

§ 17. Where the garnishee is an incorporated or joint-stock company, and it appears by the answer or otherwise that the defendant is or was, when the writ of garnishment was served, the owner of any shares of stock in such company or any interest therein, the court shall render a decree ordering the sale under execution in favor of the plaintiff, against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.

§ 18. The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff making such sale shall execute a transfer of such shares or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

§ 19. Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself.

(Approved March 8, 1893.)

Corporation may sue and be sued. Statutes, § 1500 (1), note.

[Notice of garnishment, what is sufficient service of, on foreign corporations. *Dittenhoefer v. Clothing Co.*, 4 Wash. 519.]

Act 2.

AN ACT authorizing certain private corporations to issue bonds.

Be it enacted by the legislature of the State of Washington:

Section 1. That all private corporations incorporated by the legislative assembly of the territory of Washington, prior to the 1st day of January, 1862, other than corporations created for religious purposes, be and they hereby are authorized (and) empowered to issue notes, bonds, mortgages or other evidences of indebtedness and to secure the payment of the same by mort-

gage, trust deed or otherwise encumbering any real or personal property owned by said corporations. Said corporations shall have power to buy, sell or otherwise deal in notes, bonds and stock of other corporations and shall have power through their duly authorized officers to execute any and all instruments necessary to carry out the powers conferred upon said corporations by the provisions of this act.

(Approved March 10, 1893.)

Corporations not to issue bonds except for value. Const., art. XII, § 6.

Act 3.

AN ACT to provide for the manner of commencing civil actions in the superior courts, and bringing the same to trial.

Be it enacted by the legislature of the State of Washington:

Section 1. Civil actions in the several superior courts of this State shall be commenced by the service of a summons, as hereinafter provided.

§ 7. The summons shall be served by delivering a copy thereof, as follows: * * * (4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this State. (5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the State. (6) If against an insurance company, to any agent authorized by such company to solicit insurance within this State. (7) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this State. (8) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof. (9) If the suit be against a foreign corporation or non-resident joint-stock company or association doing business within this State, to any agent, cashier or secretary thereof. * * * Service made in the modes provided in this section shall be taken and held to be personal service.

§ 8. Whenever any corporation, created by the laws of this State, or late territory of Washington, does not have an officer in this State upon whom legal service of process can be made, an action or proceeding against such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property, and service may be made upon such corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of State, which

Armed men; list of officers — Acts, March 17, 1893, March 20, 1895.

shall be taken, deemed and treated as personal service on such corporation: Provided, A copy of said summons, writ, or other process, shall be deposited in the post-office, postage paid, directed to the secretary or other proper officer of such corporation, at the place where the main business of such corporation is transacted, when such place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this State, before such service shall be deemed perfect.

§ 9. * * * Service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases: (1) When the defendant is a foreign corporation, and has property within the State. * * * (7) When the action is against any corporation, whether private or municipal, organized under the laws of this State and the proper officers on whom to make service do not exist or cannot be found.

§ 38. All acts and parts of acts inconsistent with this act are hereby repealed.

(Approved March 15, 1893.)

See Statutes, §§ 1500 (1), note, 1502.

[Service of summons upon agent of a domestic corporation, in charge of a branch store of his principal, is not sufficient under section 7, subdivision 8 of above act. *Osborne v. Columbia, etc., Corp.*, 9 Wash. 666; s. c., 38 Pac. Rep. 160.]

The fact that, in an action against a corporation, summons has been served upon a person as its president, does not make him an individual party to such action. *State v. Ball*, 5 Wash. 387; s. c., 31 Pac. Rep. 975.

Service of process on the president of a foreign corporation was invalid, where he was only temporarily within the State, and the corporation did not do business therein. *Carstens & Carles v. Leligh & H. Lumber Co.*, 51 Pac. Rep. 1051.]

Act 4.

AN ACT declaring it unlawful to organize, maintain or employ an armed body of men in this State, and providing punishment therefor.

Whereas, The State of Washington has provided for and maintains an efficient military and police force, ample for the protection of all her citizens in their persons and property: therefore,

Be it enacted by the legislature of the State of Washington:

Section 1. That it shall be unlawful for any person, corporation or association of persons, or agents of any person, or member, agent or officer of any corporation or association of persons, to organize, maintain or employ an armed body of men in this State for any purpose whatever; and all parties so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not less than one thousand dollars nor more than five thousand dollars, and a like sum for each

day they shall continue to offend after having been once fined, and in addition to such fine such offender, if a person, may be imprisoned in the county jail not exceeding one year, at the discretion of the court. The fine shall be paid into the general fund of the county in which the offense was committed. And all arms, uniforms, accoutrements and any other property of a military character in possession of such person, member, agent, officer, corporation, or armed bodies of men shall be seized by the officer making the arrest under the provisions of this section, (and) be forfeited to the State of Washington.

(Filed in office of secretary of State, March 17, 1893.)

Act 5.

AN ACT requiring all domestic corporations to file a written statement containing a list of their officers with the county auditor of the county where such corporations have their principal place of business.

Be it enacted by the legislature of the State of Washington:

Section 1. Every corporation heretofore organized under the laws of the territory or State of Washington, and every corporation which may hereafter be organized under the laws of this State, shall, on or before the second Tuesday of January of each year, and at such other times as such corporations may elect so to do, file with the county auditor of the county in which the corporation has its principal place of business, a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and addresses, and the term of office for which they have been chosen.

§ 2. Every corporation which shall be hereafter organized under the laws of this State shall, within thirty days after it shall have filed its certificate of incorporation with the county auditor of the county in which it has its principal place of business, file with such county auditor, a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and address, and the term of office for which they have been chosen.

(Approved March 20, 1895.)

Act 6.

AN ACT subjecting the franchises to sale upon execution and upon order of sale under foreclosure of mortgage.

Be it enacted by the legislature of the State of Washington:

Section 1. That all franchises of every kind and nature heretofore or hereafter granted,

Sale of franchises; fees for incorporating — Acts, March 11 and 13, 1897.

shall be subject to sale upon execution, and upon order of sale issued upon foreclosure of mortgage, in the same manner as any other personal property may be sold upon execution or upon order of sale under foreclosure of mortgage, except as hereinafter provided.

§ 2. The levy of such execution or order of sale shall be made by filing in the office of the auditor of the county in which the franchise was granted, a copy of the same, together with a notice in writing that under such execution or order of sale the officer levying the same has levied upon the franchise to be sold, specifying the time and place of sale, the name of the owner of the franchise, the amount of the claim or judgment for the satisfaction of which the franchise is to be sold, and the name of the plaintiff in the action in which the decree of foreclosure or judgment is entered; and by serving a copy of such execution or order of sale and notice, upon the judgment debtor, or his attorney of record, if any, in the action in which judgment was rendered, twenty days prior to date of sale. Notice may be served upon a defendant in the same manner that summons is served in civil actions.

§ 3. The sale of any franchise under execution or order of sale upon foreclosure must be made at the front door of the court house in the county in which the franchise was granted, not less than twenty days after the levy of the execution or order of sale and the giving of the notice as in this act provided.

(Approved March 11, 1897.)

Act 7.

AN ACT fixing the fees to be paid to the secretary of State by corporations doing business in this State, and declaring an emergency.

Be it enacted by the legislature of the State of Washington:

Section 1. Every corporation incorporated under the laws of this State, or of any State or territory of the United States, or of any foreign State, having a capital stock divided into shares, shall pay to the secretary of State, for the use of the State, the following fees: Every corporation having a capital stock, \$10; the said fee to be due and payable upon the filing of the articles of incorporation in the office of the secretary of State, and no such corporation shall have or exercise any corporate powers, or be permitted to do any business in this State, until the said fees shall have been paid, and the secretary of State shall not file any articles

of incorporation or their equivalent or give any certificate thereof, until the said fees shall have been paid.

§ 2. Every corporation desiring to file articles amendatory or supplemental, or certificate of increase or decrease of capital stock, shall pay to the secretary of State, for the use of the State, the fee of ten dollars.

§ 3. The fee for furnishing a certified copy of articles of incorporation, with the seal of the State attached, shall be five dollars, payable to the secretary of State, for the use of the State, upon application therefor.

§ 4. There shall be no folio charge for recording articles of incorporation, or for preparing certified copies of the same, the fees herein prescribed covering all charges for filing and recording articles of incorporation, issuing a certificate thereof, and making and certifying to copies of the same: Provided, however, That where the articles to be recorded, or copied or certified to, shall exceed twenty folios, there shall be a further charge of fifteen cents per folio for all such excess.

§ 5. Every corporation incorporated under the laws of this State, and every foreign corporation having its articles of incorporation on file in the office of the secretary of State shall, on or before the first day of July of each and every year, pay to the secretary of State, for the use of the State, the following license fees: Every corporation having a capital stock, ten dollars. Every corporation failing to pay the said annual license fee, on or before the first day of July of each and every year, and desiring to pay the same thereafter, and before the first day of January next following, shall pay to the secretary of State, for the use of the State, in addition to the said license fee, the following further fee, as a penalty for such failure: Every corporation, two dollars and fifty cents. Every corporation failing to pay the said license fees and penalties on or before the thirty-first day of December of any year shall forfeit the sum of five dollars for every day in which it shall continue to do business as a corporation after said date, to be recovered in an action in any court of competent jurisdiction.

§ 6. This act shall not apply to corporations not for pecuniary profit, or to corporations organized for religious, social, fraternal, charitable, benevolent or educational purposes, nor to such insurance companies as are required to pay an annual license under the insurance laws of this State.

§ 7. An emergency exists, and this act shall take effect immediately.

(Approved March 13, 1897.)

Assessment and collection of taxes — Act, March 15, 1897.

Act 8.

AN ACT to provide for the assessment and collection of taxes in the State of Washington.

Be it enacted by the legislature of the State of Washington:

* * * * *

§ 8. Personal property shall be listed in the manner following: First, Every person of full age and sound mind, being a resident of this State, shall list all his moneys, notes, accounts, bonds or stock, shares of stock of joint-stock or other companies (when the property of such company is not assessed in the State), franchises, royalties and other personal property: * * * sixth, the property of corporations whose assets are in the hands of receivers, by such receivers or their agents; seventh, the property of a body politic or corporate, by the president or proper agent or officer thereof; eighth, the property of a firm or company, by a partner or agent thereof: * * *

§ 15. * * * No person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the auditor of State, or as otherwise required under the laws of this State.

§ 19. Every person who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making gain or profit by so doing, shall be held to be a manufacturer, and he shall, when required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as part of his manufacturer's stock, the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing, except such fixtures as have been considered as part of any parcel of real property, including all tools and implements of every kind used or designed to be used for the aforesaid purpose.

§ 20. The president, secretary or principal accounting officer or agent of any company or association, whether incorporated or unincorporated, except as otherwise provided

for in this act, shall make out and deliver to the assessor a sworn statement of its property, setting forth particularly — First, The name and location of the company or association; second, the real property of the company or association, and where situated; third, the nature and value of its personal property. The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain.

§ 21. All the shares of stock in a bank, whether of issue or not, existing by authority of the United States or of the State, and located within the State, shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all State, county and municipal taxes imposed and levied in such place, whether such owner is a resident of said city or town or not; all such shares shall be assessed at their full and fair value in money on the first day of March in each year, first deducting therefrom the proportionate part of the value of the real estate belonging to the bank, at the same rate, and no greater, than that at which other moneyed capital in the hands of citizens and subject to taxation, is by law assessed. And the persons or corporations who appear from the records of the banks to be owners of shares at the close of the business day next preceding the first day of March in each year shall be taken and deemed to be the owners thereof for the purpose of this section.

§ 22. Every such bank or other corporation shall pay to the collector, or other person authorized to collect the taxes of the State, county, city or town in which the same is located, at the time in each year when other taxes assessed in the said State, county, city or town become due, the amount of the tax so assessed in each year upon the shares in such bank or other corporation. If such tax is not so paid, the said bank or other corporation shall be liable for the same.

§ 23. The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation and on all the rights and property of the shareholders in the corporate property for the payment of said taxes, which lien may be foreclosed by a similar proceeding as under chattel mortgages, and the said tax, with interest thereon at the rate of fifteen per cent, per annum from the day when the tax becomes due, together with a reasonable at-

Assessment and collection of taxes — Act, March 15, 1897.

torney's fee, may be recovered as in a civil action brought by the treasurer of such county.

§ 41. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than ten dollars nor more than two thousand dollars,

to be recovered in any proper form of action in the name of the State of Washington on the complaint of any person, such fine, when collected, to be paid into the county treasury to the credit of the general fund.

§ 122. An emergency exists, and this act shall take effect immediately.

(Approved March 15, 1897.)

Stock is personal property. § 1506. Constitutional provisions concerning taxation of corporations. Art. VII, §§ 2-4

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WEST VIRGINIA.

CONSTITUTION OF WEST VIRGINIA—1872.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE III.

Bill of Rights.

- Sec. 4. Laws impairing obligation of contracts prohibited.
9. Private property not to be taken without compensation.

ARTICLE X.

Taxation and Finance.

- Sec. 1. Privileges and franchises to be taxed.
6. State not to loan its credit to, or become stockholder in any corporation.

ARTICLE XI.

Corporations.

- Sec. 1. Legislature to provide for organization of all corporations.
2. Liability of stockholder.
3. Certain existing charters shall be invalid.
4. Manner of electing directors.
5. Consent of local authorities required to construction of street railroads.
6. Legislature may provide for creation of banks; liability of stockholders.
12. Property and franchises of corporation subject to right of eminent domain.

ARTICLE III.

Bill of Rights.

- § 4. * * * No * * * law impairing the obligation of a contract, shall be passed.

See art. XI, § 3, as to existing charters and contracts. Reserved right to alter or repeal charters. Ch. 53, § 8. Proceedings to forfeit corporate rights. See Senate Joint Resolution of 1895, at p. 35. Existing corporations not to be affected. Ch. 52, § 23. Their charters to have no validity, when. Ch. 53, § 4. Rights reserved to. Id., § 5.

[Irrevocable grants of franchises to corporations, which impair the supreme authority of the State to make laws for the right government of the State, must be regarded as mere licenses and not as contracts, which bind future legislatures. R. R. Co. v. Trans. Co., 25 W. Va. 324.

Right to regulate and fix at their pleasure the charges of a railroad company for transfer of freight and passengers is an inherent power of sovereignty, to be exercised by the legislature at its pleasure, and one legislature cannot, by charter, confer on such company certain fixed rates, and prohibit its change by future legislation. R. R. Co. v. Trans. Co., 25 W. Va. 324.

Grants of privileges are to be construed strictly against the corporation and in favor of the public. R. R. Co. v. Supervisors, 3 W. Va. 319.

Grant of a city to a gas company of exclusive privilege of lighting the city with gas does not deprive city of power to contract with an electric light company for lighting the city with electric light. Gas Co. v. Parkersburg, 30 W. Va. 435; s. c., 4 S. E. Rep. 650.]

§ 9. Private property shall not be taken or damaged for public use, without just compensation; nor shall the same be taken by any company, incorporated for the purposes of internal improvement, until just compensation shall have been paid, or secured to be paid to the owner; and when private property shall be taken, or damaged, for public use, or for the use of such corporations, the compensation to the owner shall be ascertained in such manner, as may be prescribed by general law: Provided, That when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

Corporate property subject to right of eminent domain. Const., art. XI, § 12. Restrictions on taking of private property. Ch. 42, § 1. Public use, what is. Id., § 2. When corporations may enter upon lands. Ch. 52, § 5. How much land may acquire. Id., § 6. Proceedings to take. Id., §§ 7, 8. Company to provide wagon ways. Id., § 9. Streets not to be occupied. Id., § 10. Works may be intersected and connected. Id., § 11. Reserved right of legislature. Id., § 12. Connections may be made outside of town limit. Id., § 13. Corporation may enter upon lands and take material. Id., §§ 14, 15, 16. Pipe lines may appropriate lands. Id., § 24.

[First clause of above section protects private property from damage for public use, without just compensation. Johnson v. Parkersburg, 16 W. Va. 402.

A ferry franchise is private property within meaning of above section. Mason v. Bridge Co., 17 W. Va. 396.

When the sovereign power attaches conditions to the exercise of the right of eminent domain, the inquiry, whether conditions have been observed, is matter for judicial cognizance. R. R. Co. v. R. R. Co., 17 W. Va. 813.

Under our Constitution private property cannot be taken for private use, with or without compensation, and for public use only upon just compensation being paid or secured. Varner v. Martin, 21 W. Va. 534.

And company so taking land may be enjoined from using it until such compensation is so paid or secured. Spencer v. R. R. Co., 23 W. Va. 406.

In an action brought to recover under above section for damages to real estate by railroad, it

Taxation; corporations — Const., Art. x, §§ 1, 6; Art. xi, §§ 1-6.

is proper for owner to bring an action for trespass on the case, and he may count for permanent damages and recover same according to the evidence, although, when injury occurred, he was not in actual occupancy, but was in constructive possession through his tenant under a lease. *Fox v. R. R. Co.*, 34 W. Va. 466; s. c., 12 S. E. Rep. 757.]

ARTICLE X.

Taxation and Finance.

Section 1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. * * * The legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.

Assessment of corporate property and stock. Ch. 29, §§ 41-64. Regulations respecting license tax on corporations. Ch. 32, §§ 2-32.

[The surrender of the right of taxation of a corporation must be by words too plain to be mistaken. *R. R. Co. v. Supervisors*, 3 W. Va. 319.]

§ 6. The credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association in this State or elsewhere, formed for any purpose whatever.

ARTICLE XI.

Corporations.

Section 1. The legislature shall provide for the organization of all corporations hereafter to be created, by general laws, uniform as to the class to which they relate; but no corporation shall be created by special law: Provided, That nothing in this section contained, shall prevent the legislature from providing by special laws for the connection, by canal, of the waters of the Chesapeake with the Ohio river by line of the James river, Greenbrier, New river and Great Kanawha.

General provisions for incorporation. Ch. 54. Legislature may provide for creation of banks. Art. XI, § 6, post.

[A special charter can be amended only by a special law. *R. R. Co. v. Trans. Co.*, 25 W. Va. 324.

A corporation must depend, both for its powers and the mode of their exercise, upon true construction of statute creating them. *P. L. & R. Co. v. B. of Ed.*, 20 W. Va. 360.

Franchises and corporate rights granted indirectly through general laws are the same in effect as though granted directly. *Mason v. Bridge Co.*, 17 W. Va. 396.]

§ 2. The stockholders of all corporations and joint-stock companies, except banks and banking institutions, created by laws of this State, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more.

[The individual liability of stockholders of a corporation created under laws of Ohio cannot be enforced in courts of West Virginia. *Nimick v. Iron Works*, 25 W. Va. 184.]

§ 3. All existing charters or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not have been in operation within two years from the time this Constitution takes effect, shall thereafter have no validity or effect whatever: Provided, That nothing herein shall prevent the execution of any bona fide contract heretofore lawfully made in relation to any existing charter or grant in this State.

See art. III, § 4, cross-references.

[Above section construed. *List v. Wheeling*, 7 W. Va. 501.]

§ 4. The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit: And such directors or managers shall not be elected in any other manner.

See ch. 53, § 44, and cross-references.

[Above section applied. *Cross v. Ry. Co.*, 34 W. Va. 742; s. c., 12 S. E. Rep. 1071.]

§ 5. No law shall be passed by the legislature, granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway, proposed to be occupied by such street railroad.

Streets not to be occupied without consent. Ch. 52, § 10.

§ 6. The legislature may provide, by a general banking law, for the creation and organization of banks of issue or circulation, but the stockholders of any bank hereafter authorized by the laws of this State, whether of issue, deposit or discount, shall be personally liable to the creditors thereof, over

and above the amount of stock held by them respectively to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stockholders.

See § 1, *supra*.

§ 12. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the legislature, of the property and

franchises of incorporated companies already organized, and subjecting them to the public use, the same as of individuals.

See art. III, § 9, cross-references.

[Corporations which devote their property to a public use must submit to be controlled by the public for the common good. *R. R. Co. v. Trans. Co.*, 25 W. Va. 324. But this is not true of a purely private corporation over which legislature can generally exercise no control except as provided in its charter, and can exercise no authority forbidden in such charter. *Id.*]

Employees to vote; taxation — Code, ch. iii. § 52; ch. xiii. § 17; ch. xxix, §§ 41, 59, 51, 64.

CODE OF WEST VIRGINIA—1891.

CHAPTER III.

Elections.

Sec. 52. Time shall be allowed employees to vote.

§ 52. Every person entitled to vote at any general, national, State or county election, who may be employed by another on the day on which such election shall be held in this State, shall be given some period of four hours, or more if necessary, between the opening and the closing of the polls, on said day, for the purpose of enabling such person to repair to his place of voting to cast his vote and return; and any circuit court, or the judge thereof in vacation, may enforce the provisions of this section by mandate, or otherwise, upon the application of any voter. Every officer of any corporation, owner, superintendent, overseer, foreman or other person, who employs or permits to be employed any person against his will, in violation of this section, shall be guilty of a misdemeanor, and fined not less than fifty, nor more than five hundred dollars.

CHAPTER XIII.

Rules of Construction.

Sec. 17. "Person" includes what.

§ 17. The following rules shall be observed in the construction of statutes, unless a different intent on the part of the legislature be apparent from the context:

Ninth. The word "person" includes corporations, if not restricted by the context.

CHAPTER XXIX.

Assessment of Taxes.

Sec. 41. By whom property is to be listed.

49. In what district personal property is to be listed.

51. Shares of stock not to be assessed to owner when property is assessed to the company.

64. Assessment of property of incorporated companies.

§ 41. Every person of full age and sound mind shall list for taxation the property belonging to him, including the shares held by him in any national or other banks in this or any other State, except where the same is listed under the provisions of section sixty-four of this chapter, and the persons and property under his charge and

control, subject to taxation, and furnish to the assessor on his application, all necessary information respecting the same. The property * * * of a company, whether incorporated or not, whose assets are in the hands of an agent, factor or receiver, (shall be listed) by such agent, factor or receiver, otherwise by the president or principal accounting officer, partner or agent, within the State * * *.

Privileges and franchises to be taxed. Const., art. X, § 1. Corporate stock not to be taxed, when. § 51, post. Assessment of corporate property. § 64, supra. License tax. Ch. 32.

§ 49. Every person required by law to list personal property, shall list for taxation in the assessment district in which he resides, the money, credits and investments subject to taxation, belonging to himself, or under his charge or control, whether the same, or the evidence thereof, be in or out of the State, but capital, money and property (except real estate) employed in any trade or business (other than agriculture) belonging to a company, whether it be incorporated or not, or to an individual, shall be assessed for taxation in the assessment district where the principal office for transacting the financial concerns pertaining to such trade or business is located; or, if there be no such office, then in the district where the operations are carried on. * * *

§ 51. When the property, stock or capital of any company, whether incorporated or not, is assessed to such company, no person owning any share, portion or interest therein shall be required to list the same, or be assessed with the valuation thereof.

§ 64. He (the assessor) shall ascertain from the proper officers or agents of all incorporated companies in his district (except railroads and foreign insurance, telegraph and express companies), the actual value of the capital employed or invested by them in their trade or business (exclusive of real estate and property exempt by law from taxation), and enter the same in his personal property book. The real estate of such companies shall be assessed and entered in the land book as in other cases. The value of the capital shall be estimated by taking the aggregate value of all the personal property of the company, not exempt from taxation, wherever situated, including their money, credits and investments, whether in or out of the State, and deducting from the said money, credits and investments, and

not from said aggregate, what they owe to others as principal debtors. If a company have branches, each branch shall be assessed separately in the district where the principal office for transacting its financial concerns is located, or if there be no such office, then in the district where its operations are carried on. All property of navigation companies and other joint-stock transportation companies (except railroads), whether real or personal, shall be taxed in the county and district wherein such property is situated, and all locks and dams of navigation companies shall be assessed and taxed as real estate, in the county in which said locks and dams are situated, and it shall be the duty of the assessor of each district to assess such property as hereinbefore directed. When the capital of a company is assessed as aforesaid, the personal property thereof, which shall not be held to include the locks or dams of a navigation company, shall not be otherwise assessed, nor shall any individual shareholder or partner therein be required to list or be assessed with his share, portion or interest, in the said capital stock.

[Corporate property is vested in the shareholders in their corporate capacity, and not as individuals or natural persons, and must be taxed in the name of the company. *R. R. Co. v. Supervisors*, 3 W. Va. 319; *Park v. Petroleum Co.*, 25 id. 108.]

CHAPTER XXXII.

Regulations Respecting Licenses.

- Sec. 2. For what a State license is necessary.
 86. Annual license tax of ten dollars required of corporation.
 87. If principal office located outside of State, fifty dollars.
 88. Failure to pay; penalty.
 89. Auditor required to notify every corporation.
 90. Auditor to publish list of corporations that have forfeited their charter.
 91. Preceding sections apply only to business corporations.
 92. Duty of secretary of State.

§ 2. No person without a State license therefor shall, etc., * * * Nor shall any corporation heretofore or hereafter chartered under the laws of this State, whether the same have its principal place of business or chief works within or without the State, do or attempt to do any business, by virtue of its charter or certificate of incorporation, without a State license therefor.
 * * *

Assessment of taxes against corporate property and stock. Ch. 29.

§ 86. Upon every corporation which has heretofore obtained or which shall hereafter obtain a charter or certificate of incorporation from this State, and whose principal place of business or chief works are located inside of this State, there shall be an annual

license tax of ten dollars, to be paid on or before the first day of May of each year, or at the time of obtaining such charter or certificate of incorporation, and on or before every first day of May thereafter, as the case may be, to the auditor, and by him turned into the general treasury.

§ 87. Upon every corporation which has heretofore obtained, or which shall hereafter obtain, a charter or certificate of incorporation from this State, and whose principal place of business or chief works are located outside of this State, there shall be an annual license tax of fifty dollars, to be paid on or before the first day of May of each year, or at the time of obtaining such charter or certificate of incorporation, and on or before every first day of May thereafter, as the case may be, to the auditor, and by him turned over into the general treasury of this State.

§ 88. Any such corporation which shall fail to pay the tax provided for in the last two sections, shall, because of such failure, forfeit its charter to the State.

As to forfeiture of charter, see ch. 53, § 7, note.

§ 89. It shall be the duty of the auditor, on or before the first day of March in each year, to notify every corporation liable to a tax hereunder, of the time of payment of such tax. Such notice shall contain the words of this and the three sections last preceding.

§ 90. It shall be the duty of the auditor, within thirty days after the first day of every May, to publish in two newspapers of general circulation, one of which must be published at the seat of government and the other in the city of Wheeling, a list of all such corporations as have forfeited their charters under the provisions of this chapter within the year preceding, and any such corporation which shall within sixty days after such publication pay to the auditor the tax payable on or before the first day of May of that year, and five dollars in addition thereto, shall thereupon be relieved from the forfeiture of its charter by reason of such failure.

§ 91. Nothing in this chapter shall be construed as imposing a license tax on corporations chartered strictly for educational, literary, agricultural, scientific, religious, cemetery or charitable purposes, or upon charters incorporating masonic lodges, odd fellows lodges, or other charitable societies.

§ 92. The secretary of State shall semi-annually, within the thirty days succeeding the first day of January and July, render under oath, to the auditor, an account of the taxes received by him as aforesaid, and pay into the treasury of the State the amount appearing thereby to be due; or if such officer have received nothing, he shall, within the said thirty days, transmit his affidavit to that effect to the auditor.

Acquisition of lands; actions, etc.— Code, ch. xlii. §§ 1, 2; ch. l. §§ 34, 35, 38.

CHAPTER XLII.

Taking Land without Owner's Consent.

Sec. 1. Restrictions upon taking of private property.

2. What shall be deemed a public use.

Section 1. Private property shall not be taken or damaged for public use without just compensation; nor shall the same be taken by any company incorporated for the purposes of internal improvement, until just compensation shall have been paid or secured to be paid to the owner; and when private property shall be taken or damaged for public use, or for the use of such corporations, the compensation to the owner shall be ascertained in such manner as may be prescribed by general law; Provided, That when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

See Const., art. III, § 9, and cross-references.

§ 2. The public uses for which private property may be taken or damaged, are as follows:

First. For the construction of railroads, canals, turnpike roads, county roads, public landings, bridges and public streets and alleys, and all other roads and internal improvements for public use.

Second. For incorporated companies of which the State is sole or part owner.

Third. For court houses and other public buildings for the use of a county or municipal corporation.

Fourth. For cemetery associations and for other cemeteries; Provided, That the property to be taken for such other cemeteries, adjoins the land upon which a church or another cemetery is.

Fifth. For companies organized for the purpose of transporting carbon oil or natural gas, or both, by means of pipes or otherwise, when for public use.

Sixth. For telegraph and telephone companies when for public use.

Seventh. For public schoolhouses and all other purposes of public utility, which now are or may be prescribed by law.

Eighth. By the government of the United States, for the purpose of erecting thereon lighthouses, signal stations, beacons, locks, dams, works for improving navigation, post-offices, custom-houses, courthouses, or any other needful public structure or work of improvement whatever, subject to the provisions of chapter one of this Code.

But no land shall be taken for cemetery purposes which lies within four hundred yards of a dwelling-house, unless to extend the limits of a cemetery already located, and then only so that such limits shall not be extended nearer to any dwelling-house which is within four hundred yards.

But this act shall not be construed to interfere with the power of municipal corporations to enact and enforce such ordinances as may be necessary to protect the lives and property of citizens from the effects of explosions of carbon oil or natural gas.

See Const., art. III, § 9, and cross-references.

CHAPTER L.

Proceedings in Civil Suits in Justice's Court.

Sec. 34. Process against a corporation, upon whom served.

35. Service of process upon foreign corporations.

38. Return of process must show what.

§ 34. Unless otherwise specially provided such process or order, and any notice against a corporation, may be served upon the president, cashier, treasurer or chief officer thereof, or if there be no such officer, or if he be absent, on any officer, director or trustee, or agent of the corporation, at its principal office or place of business, or in any county in which a director or other officer, or any agent, of said corporation may reside. But service at any time may be made upon any corporation in the manner prescribed for similar proceedings in the circuit court.

See ch. 52, § 1, subd. 3, cross-references.

[See Ry. Co. v. Ryan, 31 W. Va. 364; s. c., 6 S. E. Rep. 924.]

§ 35. If the suit be against a foreign corporation doing business by an agent in this State, service may be made by delivering a copy of the process, order, or notice to such agent, or leaving such copy at the office or place of business of such corporation with any person found at the time in charge thereof.

See ch. 52, § 1, subd. 3, cross-references.

§ 38. Service on any person under either of the last four sections shall be in the county in which he resides; and the return must show this, and state on whom and when the service was, otherwise the service shall not be valid.

See ch. 52, § 1, subd. 3, cross-references.

CHAPTER LII.

Corporations Generally.

- Sec. 1. General powers.
 2. Restrictions on corporate powers.
 3. Same; as to holding real estate and subscribing for stock of other companies.
 4. But certain corporations may lay out towns and take real estate and stocks in payment of debt.

- Sec. 5. When corporations may enter upon lands.
 6. Company incorporated for work of internal improvement; how much land it may acquire.
 7. Proceedings to take land without owner's consent.
 8. Same.
 9. Company to provide wagon ways.
 10. Streets not to be occupied without authority.
 11. One work may be intersected by, or connected with another.
 12. Reserved right of the legislature.
 13. Railroad companies may make connections outside of towns.
 14. How company may take materials from land.
 15. Duty of commissioners appointed under preceding section.
 16. Sheriff may assist, when.
 17. Dissolved corporation may wind up its affairs.
 18. Process against a corporation.
 19. Attachments upon a corporation, how served.
 20. Service upon railroad company.
 21. Additional powers of corporations, restrictions upon.
 22. A corporation shall not interpose defense of usury.
 23. Existing corporations retain their privileges and liabilities.
 24. Pipe lines may enter upon and appropriate lands.

Section 1. Every corporation as such shall have (1) succession by its corporate name for the time limited in its charter or by-law; and if no time be limited, perpetually.

"Joint stock company" includes what. Ch. 53, § 1. Cessation of existence. Id., § 7. Two corporations not to have same name. Id., § 11. Change of name. Id., §§ 12, 13, 14. Existence begins with date of certificate. Ch. 54, § 10. Limited to fifty years. Id., § 11. See subd. 3, post, note.

(2) It shall have a common seal, and may renew or alter the same at pleasure.

Seal essential to deed by corporation. Ch. 73, § 5. And to answer by. Subd. 3, post, note.

[The presumption of authority to affix corporate seal to a contract will not be overcome by mere fact that no vote by directors authorizing it is shown. *Fidelity Co. v. R. R. Co.*, 32 W. Va. 244; s. c. 9 S. E. Rep. 180; *Ruffner v. Coal Co.*, 36 W. Va. 244; s. c. 15 S. E. Rep. 48. The seal of a corporation is not necessary to an agreement for sale of real property. *Banks v. Poitiaux*, 3 Rand. (Va.) 136. Seal itself is *prima facie* evidence that it was affixed by proper authority. *Lamb v. Cecil*, 25 W. Va. 288.]

(3) It may sue and be sued, plead and be impleaded;

Service of process upon. Ch. 50, §§ 34, 38; ch. 52, §§ 18, 20; ch. 53, § 61; ch. 124, §§ 7, 8. By publication. Id., § 11. On foreign corporation. Ch. 50, § 35. Attorney to accept service. Ch. 54, § 24. Venue. Ch. 123, § 1. Pleadings. Ch. 125, § 41. Cannot plead usury. Ch. 52, § 22. Attachment. Ch. 52, § 19; ch. 106, § 1. Execution. Ch. 140, § 1. Receiver. Ch. 53, § 58; ch. 133, § 28. Proceedings against corporations by attorney-general. See Senate Joint Resolution of 1895, at p. 35.

[When a corporation is a party, the proper mode to designate it is as a corporation, and by its corporate name. *Piano Co. v. Kent*, 39 W. Va. 294; s. c. 19 S. E. Rep. 409.

The appearance by a corporation in a plea to the jurisdiction of the court should not be in person nor by attorney, but may be by its president. *Quarrier, etc., Co. v. Ins. Co.*, 10 W. Va. 507.

The averments in such plea of material facts should be strict and positive and not by way of recital. Id. Such plea, as to location of principal office and president's residence, should be as of the time the action was brought. Id. It must be certain to every intent with all the strictness of the common law, both in form and in substance. Id. The affidavit as to facts stated in the plea must be positive, and not as plaintiff believes. Id.

In an action of assumpsit against a corporation, on the issue of a plea of non-assumpsit, plaintiff must prove existence of corporation. *Anderson v. K. C. Co.*, 12 W. Va. 526.

A contract entered into by a corporation under an assumed name may be enforced by either of the parties; and the identity of the company may be by the ordinary methods of proof. *Marmet v. Archibald*, 37 W. Va. 778; s. c. 17 S. E. Rep. 299. Such corporation may bring an action to enforce the contract in its true name, and the party having contracted with it is estopped to deny its power to contract in its assumed name. Id.

At common law, if a motion be made by a corporation, and defendant pleads a general issue, or defends without plea, plaintiff must prove corporate existence. But if defendants plead specially, such as conditions performed which impliedly admits existence of corporation, and a trial is had on an issue on such plea, plaintiff need not prove corporate existence. *Land Co. v. Calhoun*, 16 W. Va. 362.

A corporation must defend a suit in its corporate name, and a stockholder will not be allowed to do so till the corporation has refused to defend. *Park v. Petroleum Co.*, 25 W. Va. 108; *Park v. Oil Co.*, 26 id. 486. In such case a stockholder may defend if officers or agents refuse to. Id.

As to extent of jurisdiction, at suit of individual members other than directors or managing officers, see *Crumlish v. R. R. Co.*, 28 W. Va. 623.

While minority of stockholders may maintain bill in equity for fraud, conspiracy or acts ultra vires, against a corporation, its officers, or others who participated therein, they must act promptly. If they postpone their complaint for an unreasonable time, they forfeit their right to equitable relief. *Boyce v. Coal Co.*, 37 W. Va. 73; s. c. 16 S. E. Rep. 501.

Where stockholder has notice or means at hand of becoming acquainted with contracts made by the corporation, a court of equity will not allow him to remain quiet an unreasonable length of time to ascertain whether contract will result in profit to him. Id.

Until it is shown that every reasonable effort to obtain redress through the regularly constituted agents and controlling power of the corporation has proved unavailing, a stockholder cannot sue in his own name or on behalf of himself or other stockholders. *Rathbone v. Gas Co.*, 31 W. Va. 798; s. c. 8 S. E. Rep. 570.

A private corporation which failed to wind up its business at expiration of its charter, but continues to carry on business in its corporate name, may be sued in a court of law in its corporate name for a tort committed by it after its charter had expired. *Miller v. Coal Co.*, 31 W. Va. 836; s. c. 8 S. E. Rep. 600.

The answer of a corporation should be signed by the president, with corporate seal affixed. Not necessary that it should be sworn to. If plaintiff desires a sworn answer, he should make some officers, members or agents of the corporation co-defendants in his bill, to require from them a discovery under oath. *Teter v. R. R. Co.*, 35 W. Va. 433; s. c. 14 S. E. Rep. 146.

Corporate powers; real estate — Code, ch. lli, §§ 1-4.

A suit by or against a private corporation cannot be abated or dismissed because of dissolution of corporation or forfeiture of its charter. *Lumber Co. v. Ward*, 30 W. Va. 43; s. c., 3 S. E. Rep. 227.]

(4) Contract and be contracted with, by simple contract or specialty;

Cannot plead usury. § 22, post. Contracts must be in scope of corporate purposes. § 2, post. Additional powers. § 21, post. Contracts between corporation and its directors. Ch. 53, § 49, note.

[A corporation may contract debts with individual corporators, which are entitled to be paid the same as the debts of a stranger, and a deed of trust to secure such debts may be given by the corporation on corporate property, if free from fraud. *Lamb v. Laughlin*, 25 W. Va. 300.

Where contract of a corporation purports to be sealed with its corporate seal, and it is proven to be signed by the proper agents of the corporation, presumption is that seal was affixed by proper authority, and such contract will be held valid until contrary is shown. *Fidelity Co. v. R. R. Co.*, 32 W. Va. 244; s. c., 9 S. E. Rep. 180; *Ruffner v. Coal Co.*, 36 W. Va. 244; s. c., 15 S. E. Rep. 48; *Boyce v. Coal Co.*, 37 W. Va. 73; s. c., 16 S. E. Rep. 591.]

(5) Purchase, hold, use and grant estate, real and personal;

Cannot deal in real estate. § 3, post. But certain, may lay out towns and take real estate for debts. § 4. Restrictions as to real estate. Ch. 53, § 62. Sale of corporate property under mortgage. Ch. 54, § 82. Execution of conveyances. Ch. 73, §§ 4, 5.

[In a court of law, the property and right of an incorporated company belong to the united association, acting in corporate name, and not to the stockholders. The latter, however, are the real owners, and a technical trust thus arises in their favor which will be enforced in equity. *Moore v. Schoppert*, 22 W. Va. 283.

Deed of a corporation delivered to third person to be held in escrow until corporation should obtain its charter, held, that such deed operated as a valid conveyance to the corporation from the date of delivery of said deed to it. *Bank v. Lumber Co.*, 32 W. Va. 357; s. c., 9 S. E. Rep. 243.]

(6) Appoint officers and agents, prescribe their powers, duties, and liabilities; take bonds and security from any of them, and fix and pay their compensation;

Directors shall appoint officers and agents. Ch. 53, § 53. President must be a director. Id., § 50.

[The power to remove a corporate officer from his office is one of the common-law incidents of all corporations. *Richard v. Clarksburg*, 30 W. Va. 491; s. c., 4 S. E. Rep. 774.]

(7) And make ordinances, by-laws and regulations for the government of its council, board, officers and agents, and the management and regulation of its property and business.

Word "by-law" construed. Ch. 53, § 2. By-laws shall provide for transfer of shares. Ch. 53,

§ 21. For security for unpaid stock. Id., § 31. For number of directors. Ch. 53, § 49. And their powers. Id., § 55. For mode of calling meetings. Id., § 41.

§ 2. The powers mentioned in the preceding section or otherwise granted to any corporation, shall be limited by the purposes for which it is incorporated, and no corporation shall engage in transactions or business not proper for those purposes; nor shall corporate powers be exercised in violation of any law of the State.

[Corporations must depend, both for their powers and mode of exercising them, upon true construction of statute creating them. *P. L. & R. Co. v. B. of Ed.*, 20 W. Va. 360.

The statute, quoad the corporation, is an enabling act, not only as to powers conferred, but as to mode prescribed for their exercise; and unless mode prescribed is observed by the corporation, its acts will not bind it. Id.

The grant of a privilege to a corporation is to be construed strictly against the corporation and in favor of the public. *R. R. Co. v. Supervisors*, 3 W. Va. 319.

Persons dealing with a corporation must take notice of the law of its organization. *Smith v. Cornelius*, 23 S. E. Rep. 599.

In a suit to annul an ultra vires act the corporation must be a party. Id.]

§ 3. Unless specially authorized, no corporation shall purchase real estate in order to sell the same for profit, or hold more real estate than is proper for the purposes for which it is incorporated; subscribe for or purchase the stock, bonds or securities of any joint-stock company, or become surety or guarantor for the debt or default of such company.

See ch. 52, § 1, subd. 5, cross-references.

[Held, that bank might buy adjoining property and build fire-proof buildings thereon and rent the same. *Banks v. Poitiaux*, 3 Rand. (Va.) 136.]

§ 4. Nevertheless, a mining, manufacturing, oil, salt or internal improvement company may lay out a town not to include more than six hundred and forty acres, at or near their works, and sell lots therein; and any corporation may take real estate, stock, bonds and securities in payment, in whole or in part, of any debt bona fide owing to it, or as a security therefor, or may purchase the same if deemed necessary to secure or obtain payment of any such debt, in whole or in part, and may manage, use and dispose of what has been so taken or purchased as a natural person might do; and any corporation may compromise or purchase its own debt, and establish and manage a sinking fund for that purpose; and any manufacturing company may with the assent of the holders of two-thirds of its stock, had by a vote at a stockholders' meeting, subscribe for or purchase the stock, bonds or securities of any corporation formed for the purpose of manufacturing or pro-

Internal improvements, acquisition of lands for — Code, ch. lii, §§ 5-10.

ducing any articles or materials used in the business of such joint-stock company, or dealing in any articles or material manufactured or produced by such joint-stock company, or constructing a railroad, or other work of internal improvement, through or into the county in which the principal place of business of such joint-stock company may be, or operating a railroad or other work of internal improvement so constructed, and may, with the like assent, become surety for or guarantee the debts of such corporation, or in any manner aid it in carrying on its business.

See § 3, *supra*.

§ 5. Any company incorporated for a work of internal improvement may, by its officers, servants or agents, enter upon lands for the purpose of examining the same, and surveying and laying out such as may seem fit to any officer or agent authorized by it, provided no injury be done to the owner or possessor of the land. But no company shall, under the authority of this section, throw open fences or enclosures on any land, or construct its work through the same, or in any way injure the property of the owner or possessor, without his consent, or until the same may have been legally appropriated to the use of the company, as is provided by the laws of the State of West Virginia relating to the condemnation and appropriation of private property for the use of companies incorporated for internal improvements. But no company under this act shall invade the dwelling-house of any person, or any space within sixty feet thereof, without the consent of the owner, unless it be absolutely necessary for the construction of such road by reason of its passing through a narrow gorge, defile or narrow space: Provided, That this act shall not apply to any city or incorporated town; And provided further, That any company, which may have heretofore actually commenced the location of its road, may invade any space twenty feet from the dwelling-house of any person, or invade a nearer space, or such house, when by the reason of the location of such road in or through a narrow gorge, defile or narrow space, or along or near to any stream, river or bluff, such invasion is necessary for the construction of such road.

See Const., art. III, § 9, and cross-references; also ch. 42, §§ 1, 2.

§ 6. The land acquired by any company incorporated for a work of internal improvement along its line generally, shall not exceed one hundred feet in width, except in deep cuts and fillings, and then only so much more shall be acquired as may be reasonably necessary therefor. The land which it may acquire for buildings or for

an abutment along its line generally shall not exceed three acres in any one parcel; and the land which it may acquire for buildings or other purposes of the company at the principal termini of its work, or at any place or places within five miles of such termini, shall not exceed fifteen acres in any one parcel; but in the case of a railroad company, an amount of land not exceeding forty acres in any one parcel may be acquired for its main depots, machine shops and other necessary purposes connected with the business of said company.

See Const., art. III, § 9, cross-references.

§ 7. If the president and directors of a company, incorporated for a work of internal improvement, cannot agree on the terms of purchase with those entitled to lands wanted for the purpose of the company, five disinterested freeholders shall be appointed by the circuit court of the county in which such land, or the greater part thereof shall lie, (three of whom may act) for the purpose of ascertaining a just compensation for such land. Lands owned by one internal improvement company, but not necessary for the enjoyment of its franchise, may be taken for the purpose of another internal improvement company, in the same manner as land owned by others; but where such lands are claimed to be necessary to the enjoyment of such franchise, the court appointing such freeholders may, before proceeding further, determine upon a report of such freeholders, or otherwise, whether such necessity exists.

See Const., art. III, § 9, cross-references.

§ 8. When it is intended to apply for such appointment, notice shall be given and commissioners appointed, and the proceedings thereon shall be the like in all respects as are prescribed by chapter forty-two of this act.

See Const., art. III, § 9, cross-references.

§ 9. For every person, through whose land the road or canal of a company passes, it shall provide wagon ways across the road or canal from one part of the said land to the other, and keep such ways in good repair.

See Const., art. III, § 9, cross-references.

§ 10. No company shall occupy, with its works, the streets of the inhabited part of any city, town or village, until the corporate authority thereof shall have assented to such occupation, unless such assent be dispensed with by special provision of law.

See Const., art. III, § 9, cross-references.

Railroads, etc., rights; materials from lands of others — Code, ch. lii, §§ 11-14.

§ 11. If any railroad, turnpike or canal company deem it necessary, in the construction of their work, or any branch or siding thereof, to cross any other railroad, turnpike or canal, or any State or county road, at grade or otherwise, it may do so, provided its work be so constructed as not to impede the passage or transportation of persons or property along the same. If any such company desire that the course of any other railroad, turnpike, canal or State road, or any stream which is not a public highway, should be altered to avoid the necessity of any crossings, or of frequent crossings, or to facilitate the crossing thereof, or the construction of a parallel work, the alteration may be made in such manner as may be agreed between the company desiring such alteration and the other railroad, turnpike or canal company, or the board of public works in the case of a State road, or the owners of the land to be affected by the alteration of the course of such stream. In case the parties interested fail to agree upon such crossing or alteration as is desired, the company desiring it may bring its suit in equity and in such suit the court may, in a proper case, decree that such or any proper crossing or alteration may be made upon payment of damages, to be ascertained as provided in chapter forty-two of the Code; and the company desiring such crossing or alteration may thereupon proceed under said chapter to obtain the right to make such crossing or alteration. If such crossing or alteration as is allowed by this section shall cause damage to any company, or to the owner of any lands, the railroad, turnpike or canal company, first mentioned, shall pay such damages. But any county road may be altered by any such company for the purposes aforesaid, whenever it shall have made an equally convenient road in lieu thereof.

See Const., art. III, § 9, cross-references.

§ 12. The legislature reserves the right to provide for connecting with one work of internal improvement any other work, at such point as may seem to it proper.

See Const., art. III, § 9, cross-references.

§ 13. In every city, town or village of this State, where two or more railroads do now or shall hereafter terminate, and said railroad company or companies shall make application to the corporate authorities thereof for permission to connect their roads within the corporate limits of said city, town or village, subject to the municipal regulations thereof, and if the same shall be refused, it shall be lawful in all such cases for said railroad company or companies to make such connection outside of the limits of such city or town by the most direct and practicable

route, and to procure the right of way, as provided for in chapter forty-two of this act.

See Const., art. III, § 9, cross-references.

§ 14. A company incorporated for any work of internal improvement may, by its officers, agents or servants, enter upon any convenient lands for the purpose of obtaining therefrom wood, stone, gravel or earth, to be used in constructing such work or in repairing, enlarging or altering the same. But the company shall not cut down any fruit tree, or any tree preserved in any field or lot for shade or ornament, nor take part of any fence or building, nor take any of the said things from any lot in such town. Before taking any of the said things the company, unless it agree therefor with those having right thereto, shall give to the tenant of the freehold, or his tenant for years, at least ten days' notice in writing, that at a certain time and place, to be specified in this notice, application will be made to a justice to appoint commissioners to ascertain what will be a just compensation for the same. At such time and place the justice shall appoint three disinterested freeholders as commissioners, who, after being sworn, shall re-view the premises, and report in writing the extent to which wood, stone, gravel or earth is proposed to be taken, the nature of the injury which may be done in cutting, quarrying, digging or carrying away the same, and what will be a just compensation therefor. The notice in writing, certificate of the commissioners having been sworn, and their report, shall be forthwith returned to the circuit court of the county. If upon such report being so returned, either party file exceptions thereto and demand that the question of compensation be tried by a jury, proceedings shall thereafter be had in the case as prescribed in chapter forty-two of the Code. But if neither party demand a trial by jury, and good cause be shown against the report, or if the commissioners cannot agree, or fail to report within a reasonable time, the court may, as often as it seems proper, appoint other commissioners, who shall act and report in the manner before prescribed. If the report be confirmed, then upon the payment to the person entitled thereto, or into court, of the sum so ascertained, the company may take and carry away the wood, stone, gravel or earth for which such compensation may have been allowed; and though the report may not be confirmed, yet upon the payment into court of the sum therein mentioned, it may proceed in like manner as if the report had been confirmed and payment made of the sum thereby ascertained. Upon the coming in of a new report, after such payment into court, the court, if it affirm the report, shall render judgment in like manner as in cases provided for in chapter forty-two of the Code.

From the time of any such judgment against the company, its right so to cut, quarry, dig, take or carry away, shall be suspended until the said judgment shall be satisfied.

See Const., art. III, § 9, cross-references.

§ 15. It shall be the duty of commissioners appointed under the preceding section, at the instance of any company authorized to construct a plank road, if required so to do by the tenant of the freehold, or his tenant for years, to inquire in the first place, whether under all the circumstances of the case it be reasonable and proper that the company should be allowed to take for its use the timber or other materials it is proposed to condemn. If the opinion of the commissioners on this point be adverse to the company, they shall report the same, with the reasons on which it is founded, to the circuit court of the county, and unless said report be reversed and annulled, neither the commissioners nor the company shall have power to proceed further under the section aforesaid. If the opinion of the commissioners on such preliminary questions be favorable to the company, and the tenant of the freehold and his tenant for years, if there be such, acquiesce therein, they shall proceed to discharge the other duties for which they were appointed. But if there be not such acquiescence, the commissioners shall report their opinion, with their reasons therefor, to the court aforesaid, and shall not proceed further in the discharge of their duties, unless their report shall be confirmed.

See Const., art. III, § 9, cross-references.

§ 16. In any case in which any company may be entitled under this chapter to enter upon any lands, the sheriff or other officer, whenever required by such company, shall attend and remove force if necessary.

§ 17. When any corporation shall expire, or be dissolved, or its corporate rights and privileges shall have ceased, it may wind up its affairs in the manner prescribed by section fifty-nine of chapter fifty-three of this act.

[See *Supervisors v. Livesay*, 6 W. Va. 44.]

§ 18. In any action brought against a corporation, if it be in the circuit court, process shall be issued as provided in chapter one hundred and twenty-four of this act; or if the action be brought before a justice, process shall be issued as provided in chapter fifty of this act.

§ 19. Attachments may be served upon a company or corporation, as garnishee, in the manner prescribed by the preceding section, and in chapter one hundred and six of this act.

§ 20. Provided. That when any suit is brought against a railroad company under the two preceding sections, the agent on whom process may be served shall be construed to include a depot or station agent in the actual employment of the company, residing in the county or township wherein the action is brought.

See ch. 52, § 1, subd. 3, cross-references.

§ 21. In addition to the powers enumerated in this chapter, and those expressly or by necessary implication given by any other law, every corporation shall have such powers, and such only, as are necessary or proper to the exercise of the powers so enumerated or given.

See §§ 1 and 2, *supra*.

§ 22. No corporation shall interpose the defense of usury in any suit or proceeding at law or in chancery; nor shall any bond, note, debt or contract of a corporation be set aside, impaired, or adjudged invalid by reason of anything contained in the laws prohibiting usury.

§ 23. Corporations now existing shall continue to exercise and enjoy their powers and privileges according to their respective charters and the laws now in force, and shall continue subject to all the liabilities to which they are now subject, except so far as such powers, privileges and liabilities are modified or controlled by this act.

See Const., art. III, § 4, cross-references.

§ 24. (As amended by L. 1891, ch. 113.) A company organized for the purpose of transporting natural gas, petroleum or water, necessary for use in carrying out the provisions of this act in piping and transporting natural gas and petroleum, or for boring for the same, through tubing and pipes, may enter upon any land for the purpose of examining and surveying a line for its tubing and pipes, and may appropriate so much thereof as may be deemed necessary for the laying down of such tubing and piping, and for the erection of tanks and the location of stations along such line, and the erection of such buildings as may be necessary for the purpose aforesaid; such appropriations shall be made and conducted in accordance with the law providing for compensation to the owners of private property taken for public use; Provided. That no dwelling-house, yard or garden, shall be taken for such purpose, nor shall any oil tank, gas or oil pipe line be erected or laid within one hundred feet of any occupied dwelling-house without the consent of the owner thereof. And so far as the rights of the public therein are concerned, the county commissioners as to public roads, and the

council of any municipal corporation as to streets and alleys, in their respective jurisdictions, may, subject to such regulations and restrictions as they may prescribe, grant to such company the right to lay such tubing and piping therein; Provided, however, The right to appropriate for any of the purposes herein above specified shall not include or extend to the erection of any tank, station, or building, or lands thereof, or to more than one continuous line of pipe or tubing, or land therefor, in or through a municipal corporation without the council first consents thereto; and all excavations shall be well filled by such company, and so kept by it, in all cases. Such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this State.

See Const., art. III, § 9, cross-references.

CHAPTER LIII.

Regulations Applicable to Joint-Stock Companies.

- Sec. 1. "Joint-stock company" includes what.
 2. The word "by-law" construed.
 3. No joint stock company to be incorporated under special charter.
 4. Existing charters to have no validity, when.
 5. Existing corporations, reserved rights to.
 6. Corporations organized under general law must commence business within one year.
 7. Suspension of business for two years, corporate rights shall cease.
 8. Right reserved to alter, repeal or amend charter, etc.
 9. What companies are subject to this chapter.
 10. Same.
 11. Two corporations not to have same name.
 12. Change of corporate name.
 13. Same.
 14. Rights and liabilities not to be affected by change of name.
 15. Capital stock to be divided into shares of equal amounts.
 16. Issue of preferred stock.
 17. Not to be less than five stockholders.
 18. Corporation may acquire, but not vote, shares of its own stock.
 19. Who deemed the owner of stock.
 20. Shares of stock deemed personal estate.
 21. A transfer book shall be kept by the corporation.
 22. Restrictions upon transfer of stock.
 23. Disposal of shares of stock.
 24. Stock not to be issued at less than par, when.
 25. Ten per cent. of par value to be paid at time of subscription.
 26. Stock not to be considered as taken until same is paid.
 27. Excessive subscriptions, how reduced.
 28. Failure of subscriber to pay installments; proceedings by corporation.
 29. Same.
 30. Same.
 31. A stockholder may be required to give security for unpaid installments.
 32. Directors to examine such securities from time to time.
 33. Failure of stockholder to give such security.

- Sec. 34. Unpaid installments may be recovered from the security.
 35. Board of directors may issue certificates of stock.
 36. Transfer of shares not to be made without delivery of certificates.
 37. Delivery of certificates, with power of attorney authorizing transfer on books, passes legal title.
 38. Loss of certificate of stock; stockholder must give indemnity bond.
 39. Dividends may be declared.
 40. Dividend which diminishes the capital; liability of stockholder.
 41. Annual meeting of stockholders; special meetings.
 42. Majority of stock constitutes a quorum.
 43. List of stockholders to be posted before annual meeting.
 44. Election of directors.
 45. Officer shall not vote as the proxy of a stockholder.
 46. Annual report of directors to stockholders.
 47. Property, books, papers, etc., to be open to inspection.
 48. Annual meeting of stockholders, where held.
 49. Election, powers and duties of board of directors.
 50. One director to be chosen as president.
 51. Meetings of directors.
 52. Record of their proceedings.
 53. Directors shall appoint officers and agents.
 54. Books of account to be kept.
 55. Powers of boards of directors to be regulated by by-laws.
 56. Voluntary dissolution of a corporation.
 57. Proceedings in equity to dissolve a corporation.
 58. Certain equity jurisdiction respecting corporations.
 59. Effect of dissolution or expiration of a corporation.
 60. Examination or report required by the legislature.
 61. Process on, or notice to a corporation, how served.
 62. Restrictions as to quantity of land which a corporation may hold.
 63. Preservation of peace at watering places.

Section 1. The words "joint-stock company" include every corporation having a joint stock or capital divided into shares owned by the stockholders respectively.

Joint-stock companies governed by what laws. Ch. 54, § 1.

§ 2. When the word "by-law" is used in this chapter, it is to be understood as if immediately followed by the words "adopted by the stockholders in general meeting assembled."

Power to make by-laws. Ch. 52, § 1, subd. 7.

§ 3. No corporation shall hereafter be created by special charter; and no act shall be passed granting special privileges to any joint-stock company heretofore or hereafter incorporated under the provisions of chapter fifty-four of this Code, or any other general law of this State, and no joint-stock company shall be authorized to engage in any business other than that which is proper under its charter; except, that a mining, manufacturing, oil, salt or internal improvement company may lay out a town not to

Powers; existing charters; forfeiture for non-use — Code, ch. liii, §§ 4-10.

include more than six hundred and forty acres, at or near their works, and sell lots therein; and any corporation may take real estate, stocks, bonds and securities in payment, in whole or in part, for any debt bona fide owing to it, or as a security therefor, or may purchase the same if deemed necessary to secure or obtain payment of any such debt, in whole or in part, and may manage, use and dispose of what has been so taken or purchased, as a natural person might do; and any corporation may compromise or purchase its own debt, and establish and manage a sinking fund for that purpose, and any manufacturing company may, with the assent of the holders of two-thirds of its stock, had by a vote at a stockholders' meeting, subscribe for or purchase the stock, bonds or securities, of any corporation formed for the purpose of manufacturing or producing any articles or material used in the business of such joint-stock company, or dealing in any articles or material manufactured or produced by such joint-stock company, or constructing a railroad or other work of internal improvement, through or into the county in which the principal place of business of such joint-stock company may be, or operating a railroad or other work of internal improvement so constructed, and may, with the like assent, become surety for or guarantee the debts of such corporation, or in any manner aid it in carrying on its business.

See Const., art. XI, § 1.

§ 4. All existing charters or grants of special or exclusive privileges under which organizations shall not have taken place, or which shall not have been in operation within two years from the twenty-second day of August, one thousand eight hundred and seventy-two, shall have no validity or effect whatever. Provided, That nothing herein shall prevent the execution of any bona fide contract heretofore lawfully made in relation to any existing charter or grant in this State.

See Const., art. III, § 4, cross-references.

[Although charter of a corporation may be forfeited, yet the government which granted it may not choose to enforce the forfeiture and may give it validity by recognizing its existence, and by the extension of further franchises; and when the company accept the provision of such extension, the former grant of incorporation must give way to it whenever the provisions are inconsistent. *R. R. Co. v. Supervisors*, 3 W. Va. 319.]

§ 5. All rights, powers and privileges, heretofore granted by the general assembly of Virginia, or by the legislature of this State, to any joint-stock company, which are not rendered invalid and of no effect by the preceding section, are hereby preserved to it.

See Const., art. III, § 4, cross-references.

§ 6. Where a certificate of incorporation has been or shall hereafter be issued for a joint-stock company under a general law, such company must be organized and commence its proper corporate business within one year after the date of such certificate; otherwise the certificate shall be of no effect.

§ 7. If a joint-stock company, whether organized under special charter or general law, suspend its proper corporate business at any time for two years continuously, its corporate rights and privileges shall cease.

See ch. 32, § 88.

[A corporate franchise continues in full force until a forfeiture is claimed by the State, and this can be done only in a proper legal proceeding, by which the cause of forfeiture is ascertained, and a dissolution adjudged; and a mere ground for declaring a forfeiture will not of itself dissolve the corporation. *Moore v. Schoppert*, 22 W. Va. 283.]

A cause of forfeiture cannot be taken advantage of, or enforced against a private corporation, collaterally or incidentally, nor in any other mode than by a direct proceeding instituted by the State for that purpose. *Lumber Co. v. Ward*, 30 W. Va. 43; s. c., 3 S. E. Rep. 227. And the State may waive a broken condition of a compact with it as well as an individual. *Id.* This is as true when cause of forfeiture is non-payment of a license as it is in any other cause. *Id.*]

§ 8. Where the legislature has the right to alter or repeal the charter or certificate of incorporation heretofore granted to any joint-stock company, or to alter or repeal any law relating to such company, nothing contained in this chapter shall be construed to surrender or impair such right. And the right is hereby reserved to the legislature to alter any charter or certificate of incorporation hereafter granted to a joint-stock company, and to alter or repeal any law applicable to such company. But in no case shall such alteration or repeal affect the right of the creditors of the company to have its assets applied to the discharge of its liabilities, or of its stockholders to have the surplus, if any, which may remain after discharging its liabilities and the expenses of winding up its affairs, distributed among themselves in proportion to their respective interests.

See Const., art. III, § 4.

§ 9. Every joint-stock company heretofore organized, and which has commenced its proper corporate business, under special charter or general law, shall remain subject to the laws now in force applicable thereto, unless it accepts the provisions of this chapter, or shall be declared subject thereto by act of the legislature.

§ 10. Every joint-stock company which shall be hereafter organized or commence its proper corporate business, or which shall accept the provisions of this chapter, or be declared subject thereto by act of the legislature, shall, so far as it is not otherwise

Corporate name; shares; preferred stock; transfers, etc.—Code, ch. liii, §§ 11-24.

expressly provided, have the rights, powers and privileges, and be subject to the regulations, restrictions and liabilities specified in this and the preceding chapter.

§ 11. No joint-stock company shall adopt the same name which is being used at the time by another corporation of this State.

§ 12. If the stockholders of a joint-stock company desire to change the name thereof, and pass, in general meeting, a resolution to that effect, stating the name by which it is intended the corporation shall be thereafter known, and cause such resolution to be certified under its common seal and the signature of its president to the secretary of State, the secretary shall issue, under his hand and great seal of the State, a certificate reciting the resolution and declaring that the corporation is to be thereafter known by the new name so adopted; and such certificate shall be evidence of the change of name therein specified. Notice of every such change of name shall be published by such corporation in some newspaper of general circulation, in the county where the principal office of such corporation is, once a week for four successive weeks immediately thereafter.

§ 13. The seventeenth, eighteenth, nineteenth and twentieth sections of chapter fifty-four of this Code shall be applicable to such certificates of change of name.

§ 14. No contract, right or liability, previously existing or inclosed, or suit, motion or proceeding then pending, shall be affected by such change of name.

§ 15. The capital stock shall be divided into shares of such amount each as may be prescribed by the charter of incorporation; but every share shall be of the same amount.

See ch. 54, § 4. Shares of stock are personal estate. § 20, post. Transfer of. §§ 21, 22. Capital to be limited. Ch. 54, § 5. Issue of certificates. § 35, post.

§ 16. The stockholders in general meeting may, by resolution or by-law, provide for or authorize the issuing of preferred stock, on such terms and conditions, and with such regulations respecting the preference to be given to such stock over the other stock in relation to future dividends, or otherwise, as they may deem proper. Provided, That the maximum capital of the corporation shall not be exceeded, and that notice be first published at least once a week for four weeks successively, in some newspaper of general circulation in the county wherein the principal office or place of business of the corporation is situated, of the intention to offer such resolution or by-law.

§ 17. There shall not be less than five stockholders. If the number be at any time reduced below five, and so remain for six months continuously, the corporation shall be dissolved.

§ 18. If the corporation acquires shares of

its own stock, it may either extinguish or sell the same. If extinguished, it shall operate to that extent as a reduction of the amount of its capital stock. No vote shall be given on any stock while owned by the corporation.

§ 19. The person in whose name shares of stock stand on the books of the corporation shall be deemed the owner thereof, so far as the corporation is concerned.

[The stock-book of a corporation is competent as evidence to show that an individual whose name appeared thereon as a stockholder was subscriber to capital stock. *South Branch Ry. Co. v. Long's Admr.*, 27 S. E. Rep. 297.]

§ 20. The shares shall be deemed personal estate, and as such shall pass to the legal representative or transferee of the stockholder, and be subject to legal process.

Taxation of shares. Ch. 29, §§ 41, 51.

§ 21. A transfer-book shall be kept by the corporation, in which the shares shall be assigned under such regulations, if there be any, as may have been prescribed by the by-laws.

§ 22. No share shall be transferred without the consent of the board of directors, until the same is fully paid up, or security given to the satisfaction of the board for the residue remaining unpaid. And where bond and security have been given to the corporation for any sum remaining unpaid upon stock, no transfer shall affect the validity of such bond and security.

§ 23. Before a corporation is organized, shares may be disposed of as prescribed by the sixteenth section of chapter fifty-four of this Code, or by the charter. After it is organized, the disposal of additional shares to increase the capital stock shall be subject to the order and direction of the board of directors for the time being, so that the maximum capital be not exceeded.

§ 24. In no case shall stock be sold or disposed of at less than par in order to increase the capital of any such corporation. But nothing herein contained shall be so construed as to prevent any mining corporation, subject to the provisions of this chapter, from issuing stock or bonds and negotiating the sale of the same in payment of real and personal estate for the use of such corporation, and for its other corporate purposes and business, at such price and upon such terms and conditions as may be agreed upon by the owners, directors or stockholders of such corporation. And any subscriber to the capital stock of any such mining corporation may pay for such stock by the transfer and conveyance to such corporation of real or personal property, or both, necessary for the uses and purposes of the corporation upon such terms as may be mutually agreed upon.

Preferred stock. Ch. 53, § 16.

Subscriptions; recovery of unpaid; security, etc.—Code, ch. lili, §§ 25–35.

§ 25. At least ten per cent. of the par value of each share shall be paid at the time of subscription, and the residue as required by the board of directors or the commissioners having control of the subscription.

See note to next section.

§ 26. No stock shall be regarded as taken or the person subscribing therefor considered entitled to the same, until the first instalment is paid thereon.

[A subscriber to stock cannot escape his liability to pay his subscription on ground that he did not pay the sum required by statute to be paid at time he subscribed. *R. R. Co. v. Applegate*, 21 W. Va. 172.]

§ 27. If more than the amount necessary to make up the maximum capital, or the amount of capital to be disposed of, be at any time subscribed, the subscription shall be reduced to the proper amount by deducting the excess from the largest subscription, in such manner that no subscription shall be reduced while any one remains larger.

§ 28. If any person, who has received a sum of money on a subscription to the capital stock of a corporation, fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any instalment upon his shares when required by the board, the corporation may recover from him the principal sum due, with interest thereon at the rate of ten per cent. per annum, by motion on ten days' notice, or by action before any justice or court having jurisdiction.

[One who takes part in meeting of stockholders for organization of a corporation and votes for directors, is estopped, in an action for assessment of stock, to deny corporate existence. *Exposition v. Squires*, 21 S. E. Rep. 1015.]

§ 29. Or, in the case of a stockholder failing to pay any instalment upon his shares when required by the board of directors, the said shares may, by order of the board, after four weeks' notice in a newspaper of general circulation in the county wherein the principal office or place of business of such corporation is situated, be sold at public auction for cash, and be transferred to the purchaser by such person as the board shall appoint for the purpose. In such case there shall be paid out of the proceeds of the sale the expenses of advertising and selling, and the whole residue remaining unpaid upon said stock; and the surplus, if any, shall be paid to the delinquent stockholder.

§ 30. If there be no sale for want of bidders, or if the sale do not produce enough to pay the expenses and the whole residue remaining unpaid on the said stock, the corporation may recover from such stockholder whatever may remain unpaid, with interest at the rate of ten per cent. per annum from

the time it was due until payment, by action or motion as aforesaid.

§ 31. A corporation, the stock of which is not fully paid up, may, by by-law, require each stockholder to give security to the satisfaction of its board of directors for the payment, at such times and in such instalments as the board may direct, of the residue remaining unpaid on his stock. In such case the security may be given by bond, with one or more sureties, or by pledge of other stocks or securities, or by deed of trust or mortgage on real estate, or in any other manner satisfactory to the board and not prohibited by such by-law.

§ 32. When security is taken from stockholders for the unpaid residue of their stock, according to the preceding section, the board of directors shall, from time to time, examine the said securities to ascertain the sufficiency thereof. And if, in any case, they deem the security insufficient or doubtful, they shall require other security in lieu thereof; and so, from time to time thereafter, whenever they find the security insufficient or doubtful.

§ 33. If any stockholder being thereto required, according to either of the two preceding sections, fail to give security satisfactory to the board of directors for the unpaid residue of his stock, the corporation may recover from him, by motion on ten days' notice, or by action before any justice or court having jurisdiction, the whole unpaid residue of the stock, with interest thereon at the rate of ten per cent. per annum from the time of such failure, until payment; or the board of directors, at their option (having first given not less than two weeks' notice to the stockholder of their intention so to do, may declare the stock, in regard to which such failure occurred, to be forfeited to the corporation.

§ 34. If any stockholder, having given security as aforesaid, fail to pay the unpaid residue of his stock or any instalment thereof, when thereto required by the board of directors, the corporation may recover the amount in arrear, with interest thereon at the rate of ten per cent. per annum from the time of such failure until payment, from the persons liable on such security, or any one or more of them, by motion or action as aforesaid; or by the sale or collection of the stocks or securities pledged, or enforcement of the deed of trust or mortgage, or other securities, given as aforesaid; or in the manner specified in the twenty-ninth and thirtieth sections of this chapter. And if it proceed in any of the modes above mentioned, it shall not be thereby precluded from resorting to the others for the recovery of so much as may remain unpaid.

§ 35. The board of directors may cause to be issued, if demanded, to any person appearing on the books of the corporation to be the owner of any shares of its stock, a certificate therefor under the corporate

seal, to be signed by the president and such other officer, if any, as the board may direct; which certificate shall show the amount paid on each share.

[One who subscribes and pays for stock is a stockholder, though no certificates have been issued to him. *Admr. v. R. R. Co.*, 22 S. E. Rep. 91.]

§ 36. A stockholder, to whom such certificate has been issued, shall not be allowed to transfer the shares therein mentioned, or any part thereof, without delivering up the said certificate to the corporation to be cancelled, unless the same be lost or destroyed, or sufficient cause be shown, to the satisfaction of the board of directors, why it cannot be produced.

§ 37. If any person, for valuable consideration, sell, pledge or otherwise dispose of, any shares belonging to him to another, and deliver to him the certificate for such shares, with the power of attorney authorizing the transfer of the same on the books of the corporation, the title of the former shall vest in the latter so far as may be necessary to effect the sale, pledge or other disposal, of the said shares, not only as between the parties themselves, but also as against the creditors of, and subsequent purchaser from, the former, but subject nevertheless to the provisions contained in the nineteenth section of this chapter.

§ 38. When a person to whom a certificate has been issued, alleges it to have been lost, he shall file in the office of the corporation, first, an affidavit setting forth the time, place and circumstances of the loss, to the best of his knowledge and belief; second, proof of his having advertised the same in a newspaper of general circulation, published near the principal office of the corporation, once a week for four weeks; and third, a bond to the corporation, with one or more sufficient sureties, conditioned to indemnify the corporation and all persons against any loss in consequence of a new certificate being issued in lieu of the former. And thereupon the board of directors shall cause to be issued to him a new certificate, or duplicate of the certificate alleged to be lost.

§ 39. The board may, from time to time, declare dividends of so much of the net profits as they deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as is necessary, may be applied to the payment of the debt, if the same be then due and payable.

§ 40. If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present, who do not dissent therefrom and cause said dissent to be entered on the record of their proceedings, shall be jointly and severally liable to the creditors of the corporation for

the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover, every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him.

§ 41. An annual meeting of the stockholders of every corporation, subject to this chapter, shall be held at such time as may be prescribed by the by-laws, if there be no such by-law, then on the fourth Tuesday of January. A general meeting of the stockholders may be called at any time by the board of directors, or by any number of the stockholders holding together at least one-tenth of the capital. Notice of the annual or any other general meeting shall be given in such manner as the by-laws may direct, or, if there be no such by-law, by advertising the same once a week for two weeks at least in some newspaper of general circulation published near the principal office or place of business of the company.

First meeting. Ch. 54, § 15. Annual meeting, where held. § 48, post. Meetings may be held out of the State. Ch. 54, § 23.

[What purported to be a notice calling a meeting of stockholders, held to be insufficient, and all proceedings of the meeting thus called invalid. *Reilly v. Ogilby*, 25 W. Va. 36.]

No authority existing in a number of persons, such as the stockholders of a corporation, can be rightfully exercised in absence of any member of such body, unless all have had reasonable notice and opportunity to be present. *Id.*]

§ 42. The number of stockholders, or amount of stock necessary to constitute a quorum at a meeting of stockholders, and the mode of transacting business at such meetings, may be prescribed by the by-laws. If there be no such by-law, the majority of the stock must be present, in person or by proxy, to constitute a meeting. But if a sufficient number do not attend at the time and place appointed, those who do attend may adjourn from time to time until a meeting is regularly constituted. Every meeting of stockholders may adjourn from time to time till its business is completed.

See § 41, supra.

§ 43. A list of stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, be hung up in the most public room at the principal office or place of business of the corporation; but the failure to do so shall not affect the validity of the proceedings of such meeting.

§ 44. In all elections for directors or managers of incorporated companies, whether in other respects governed by this chapter or not, every stockholder shall have the right to vote in person or by proxy for the num-

Annual report of directors; meetings, when held; directors — Code, ch. liii, §§ 45-49.

ber of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. And on any other question to be determined at any meeting of stockholders, if a vote by stock be demanded upon such question by any stockholder, every stockholder may, in person, or by proxy, give the following vote on whatever stock he may hold in the same right, that is to say, one vote for every share of stock held in such company.

Election of directors. Const., art. XI, § 4. Directors to examine securities. § 32, supra. And issue certificates. § 35, supra. And declare dividends. § 39, supra. But not to impair capital. § 40, supra. Annual report of directors. § 46, post. Election, power and duties of board. § 49, post. President to be a director. § 50, post. Meetings of board. § 51, post. Records of their proceedings. § 52, post. Shall appoint officers and agents. § 53, post. Powers regulated by by-laws. § 55, post. Tenure of office. Ch. 54, § 14. Meetings may be held out of the State. Id., § 23. Married woman may vote. Ch. 66, § 9.

§ 45. No officer or director of a corporation shall vote as the proxy of a stockholder thereof.

See § 44, cross-references.

§ 46. The board of directors shall make a report to the stockholders, at the annual meeting, of the condition of the corporation. The report shall show the property and funds belonging to the corporation, and the estimated value thereof; the debts due to it, distinguishing such as are deemed to be good from those considered doubtful or hopeless; the debts and liabilities of the corporation; the amount of capital paid in; and the estimated surplus or deficiency, as the case may be. It shall also state the amount of dividends declared, and losses incurred, or the profits accruing, during the preceding year. The board shall furnish to each stockholder requiring it a true copy of such report, together with a list of stockholders and their places of residence.

See § 44, supra, and cross-references.

§ 47. The property and funds, books, correspondence and papers of the corporation, in the possession or control of any officer or agent thereof, shall, at all times, be subject to the inspection of the board, or a committee thereof appointed for the pur-

pose, or of any committee appointed for the purpose by a general meeting of the stockholders. The minutes of the resolutions and proceedings of the board shall, for thirty days before the annual meeting of the stockholders, be open to the inspection of any stockholder. They shall be produced when required by the stockholders at any general meeting.

See §§ 52, 54, post. Examination by legislature. § 60, post.

§ 48. The annual meeting and other meetings of the stockholders, within this State, shall be held at such place as may be prescribed by the by-laws, or if there be no such by-law, then at the principal office or place of business of the corporation. Notice of the place of meeting shall be given in the manner prescribed by the forty-first section of this chapter.

See § 41, supra, and cross-references.

§ 49. For every corporation subject to this chapter there shall be a board of directors, who shall have power to do, or cause to be done, all things that are proper to be done by the corporation. The stockholders may in general meeting, by a by-law, prescribe the number of which the board shall consist; but unless a different number be so prescribed, there shall be five directors. They may also, by by-law, prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of this State and a stockholder. The directors shall be elected at the annual meeting of the stockholders, or as soon thereafter as practicable, and shall hold their offices until their successors are elected and qualified. The stockholders in general meeting may remove any director and fill the vacancy; but any vacancy not caused by such removal may be filled by the board. A majority of the board shall constitute a quorum, unless it be otherwise provided in the by-laws; and if the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper.

See § 44, supra, and cross-references.

[One who takes part in a meeting of the stockholders for the organization of a corporation and voted for directors, is estopped, in an action for assessment of the stock, to deny the corporate existence. *Exposition v. Squires*, 21 S. E. Rep. 1015.

Transactions by a director with the corporation dealing with corporate property, whether with or without the consent of other directors, will be viewed with jealousy, and will, for slight grounds, be set aside by a court of equity. *Hope v. Salt Co.*, 25 W. Va. 780.

And when such director, claiming to be a creditor of the corporation, has obtained from his co-directors a deed of trust of corporate property, to the exclusion of other creditors, it will be presumed to be fraudulent, but may be rebutted by conveyance proved to the contrary. *Id.* This class of contracts is not absolutely void, but voidable. *Id.*

Directors occupy relation of trustees to the corporation and its property. *Sweeny v. Sugar Co.*, 30 W. Va. 443; s. c., 4 S. E. Rep. 431.
Directors cannot separately and individually give consent to or make a contract to bind the corporation. *Limer v. Traders' Co.*, 28 S. E. Rep. 730.]

§ 50. As soon as may be, after their election, the board of directors shall choose one of their own body president of the corporation, who shall act as such till his successor is qualified, without ceasing, however, to be a member of the board. During the absence of the president the board may appoint a president pro tempore, who, for the time, shall discharge the official duties of the president.

[In absence of by-law or resolution of directors to contrary, president has inherent power to institute or defend suits on behalf of the corporation. *Colman v. W. Va., etc., Co.*, 25 W. Va. 148.
Inherent powers of bank president are very limited. *Bank v. Kimbelds*, 16 W. Va. 555.]

§ 51. The board shall hold meetings at such time as they see fit, or the president shall require. They may, by resolution, prescribe when and where their regular meetings shall be held, how special meetings shall be called, and what notice of their meetings shall be given.

See § 44, supra, cross-references.

§ 52. They shall keep a record of their proceedings, which shall be verified by the signature of the president or president pro tempore. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, except the election of a president, or be present at the board while the same is being considered; but if his retiring from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on the record of their proceedings, if any member at the time require it.

Records to be open to inspection. § 47, supra.

[Above section construed. *Hulings v. Lumber Co.*, 38 W. Va. 351; s. c., 18 S. E. Rep. 620.]

§ 53. The board of directors shall appoint such officers and agents of the corporation as they may deem proper, and prescribe their duties and compensation; but there shall be no compensation for services rendered by

the president or any director, unless it be allowed by the stockholders. The officers and agents so appointed shall hold their places during the pleasure of the board; and if required by the board, or the by-laws, shall give bonds, payable to the corporation, in such penalties and with such conditions and security as the board may approve.

See § 44, supra, cross-references.

[The power to remove a corporate officer from his office is one of the common-law incidents of all corporations. *Richard v. Clarksburg*, 30 W. Va. 491; s. c., 4 S. E. Rep. 774.]

§ 54. The board of directors shall cause regular and correct books of account to be kept, and to be settled and balanced once at least every six months.

Accounts to be open to inspection. § 47, supra.

§ 55. The board of directors, in the exercise of their powers, shall be subject to such by-laws and regulations, not inconsistent with the laws of this State, as the stockholders may pass from time to time in general meeting.

See § 44, supra, cross-references.

[Stockholders have power to pass by-laws prescribing reasonable qualifications of its directors, such as declaring that no person who is attorney against the corporation in a suit shall be eligible. *Cross v. Ry. Co.*, 37 W. Va. 342; s. c., 16 S. E. Rep. 587.]

§ 56. The stockholders may at any time in general meeting resolve to discontinue the business of the corporation, the majority of the capital stock being represented and voted in favor of such discontinuance; and may divide the property and assets that may remain after paying all debts and liabilities of the corporation. Public notice of such resolution shall be immediately given by advertisement in some newspaper of general circulation, published near the principal office or place of business of the corporation, once a week for six weeks at least, before any dividend of the capital shall be made; and the said resolution shall be forthwith certified by the president under his hand and the common seal of the corporation to the secretary of State, who shall preserve the same in his office, and deliver a copy to the clerk of the house of delegates, to be printed and bound with the acts of the legislature. As soon as practicable, after such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of the trustees or otherwise, to secure the payment of all debts and liabilities of the corporation; and any creditor who supposes his claim to not be sufficiently secured thereby, whether such claim be then due or thereafter become due,

may on bill in chancery, if sufficient cause therefor be shown, obtain an injunction to prevent the distribution of the capital and a decree against any stockholder for the amount of the capital received by him; and if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the property and assets of the corporation.

See §§ 57-59, post.

[An insolvent corporation having ceased to do business has same power as an insolvent individual to prefer creditor in the general assignment of all its property for payment of its debts. *Pyles v. Furniture Co.*, 30 W. Va., 123; s. e., 2 S. E. Rep. 909.

There is nothing in the policy of our statutes that forbids an insolvent corporation to prefer creditors. *Id.*

No authority existing in a number of persons, such as the stockholders of a corporation, can be rightfully exercised, in the absence of any member of such body, unless all have had reasonable notice and opportunity to be present. *Reilly v. Ogilbay*, 25 W. Va. 36.

A corporation is not dissolved because it has lost all its assets. *Welgand v. Alliance Supply Co.*, 28 S. E. Rep. 803.

Propriety of appointing receiver of insolvent corporation. *Kanawha Coal Co. v. B. & W. Coal Co.*, 29 S. E. Rep. 514.]

§ 57. If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this State, to the circuit court of the county in which the other stockholders or any one or more of them reside, or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the corporation, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require.

See preceding section.

[The corporation is a necessary party to a bill filed by not less than one-third in interest of its stockholders, under above section, who desire to wind up its affairs, and ask the court to decree a dissolution and to sell its property, real and personal, and distribute the proceeds of the sale among those entitled thereto. *Hurst v. Coe*, 30 W. Va. 158; s. e., 3 S. E. Rep. 564.

After a corporation has been dissolved, or its charter declared forfeited, stockholders occupy towards it position of deferred creditors, and they may sue as any other creditor. *Admr. v. R. R. Co.*, 28 W. Va. 623.

Where a corporation has lost all its assets, not less than one-third of its stockholders can file a bill for dissolution, under above section. *Welgand v. Alliance Supply Co.*, 28 S. E. Rep. 803.]

§ 58. When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court as is mentioned in the preceding section may, on application of a creditor or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders and decrees, and award such injunctions in the cause, as justice and equity may require. This section shall apply to corporations heretofore or hereafter chartered by another State, which may have done business and acquired property, or contracted debts, in this State, and any of whose creditors, or stockholders, or their personal representatives, reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property or part thereof may be, or where the person owing such debts, or having such property in possession, may reside, shall afford such relief as is prescribed in this and the next section.

See ch. 133, § 28.

[See *Lamb v. Cecil*, 25 W. Va. 288.]

§ 59. When a corporation shall expire or be dissolved, its property and assets shall under the order and direction of the board of directors then in office, or of the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs; and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto.

See ch. 52, § 17.

[In this State a suit by or against a private corporation cannot be abated or dismissed because of dissolution of corporation or forfeiture of its charter. *Lumber Co. v. Ward*, 30 W. Va. 43; s. e., 3 S. E. Rep. 227.

A new corporation formed on the dissolution of an old one is not liable for the debts of the latter, except on special grounds. *Donnelly v. Hearndon*, 23 S. E. Rep. 646.]

Right to hold land; police officers — Code, ch. liii, §§ 60-63; ch. liv, §§ 1, 2.

§ 60. Every corporation subject to this chapter shall exhibit its books, papers and property, to such agents or committees as the legislature may from time to time appoint to examine the same; and when required by the legislature, shall report thereto a full, fair and detailed exhibit of its property, liabilities and condition, verified by the oath of the president, and of the secretary or principal bookkeeper.

See § 47, *supra*.

§ 61. Process on, or notice to, a corporation may be served as is provided in section seven of chapter one hundred and twenty-four of this Code.

See ch. 52, § 1, subd. 3, cross-references.

§ 62. No corporation subject to this chapter, whether incorporated under special charter or general law, shall hold more than one hundred acres of land; except that a company for mining iron, lead or copper ore, and manufacturing the same into metal, may hold ten thousand acres for every charcoal blast furnace, and three thousand acres for every other furnace; companies for mining and selling coal, ten thousand acres each; other mining companies, salt companies and oil companies, three thousand acres each; other manufacturing companies, one thousand acres each, and a springs company, fifteen hundred acres; nor shall any corporation subject to this chapter, hold more than five acres in any incorporated town or city, except as provided in the fourth section of chapter fifty-two of this Code, and except that societies formed to promote agriculture or stock raising may hold not exceeding thirty acres in any incorporated town or city. But nothing in this section contained shall be construed to prevent any company heretofore incorporated from holding such number of acres of land, in addition to the number herein prescribed, as may be authorized by its charter. But any such springs company now owning or occupying the real estate of a former springs company may take, hold and use the same, notwithstanding the quantity thereof shall exceed fifteen hundred acres.

See ch. 52, § 1, subd. 5, cross-references.

§ 63. Every incorporated springs company may adopt by-laws, rules and regulations for the preservation of peace and good order within the boundary lines of its real estate, and for the arrest of persons violating the penal laws of the State within said lines. And the board of directors of any such corporation may, from time to time, appoint such number of police officers as may be deemed necessary to carry into effect the

objects and purposes of this section; and the officer so appointed shall have all the powers within the territory for which he is appointed, in criminal cases, as a constable of a district has under the law.

CHAPTER LIV.

Of the Incorporation of Joint-Stock Companies in Pursuance of Article XI of the Constitution of the State.

- Sec. 1. To what chapters such companies shall be subject.
 2. Purposes for which may be formed.
 3. What corporations not included in this chapter.
 4. Capital stock to be divided into shares.
 5. Capital not to exceed \$5,000,000.
 6. Form of agreement for incorporating.
 7. Ten per cent. of stock must be paid upon subscribing.
 8. Agreement to be acknowledged; affidavit required.
 9. Certificate of secretary of State.
 10. Corporation exists from date of said certificate.
 11. Limit of corporate existence; extension of.
 12. Existing corporation may accept provisions of this chapter.
 13. And may change par value of its shares.
 14. And its directors continue in office until annual meeting.
 15. First meeting of stockholders.
 16. Sale of additional stock before organization.
 17. Records to be kept by secretary of State.
 18. Fees of secretary of State.
 19. Certified copy of certificate prima facie evidence.
 20. Certificate to be recorded with clerk of county court.
 21. Any corporation may increase or reduce the number or par value of its shares of stock.
 22. Fact of such change shall be certified to secretary of State.
 23. Stockholders' or directors' meetings may be held out of the State.
 24. Power of attorney to accept service of process.
 30. Requirements, rights, powers and privileges of foreign corporations.
 52. Sale of property and works of corporations other than railroads.

Section 1. Joint-stock companies, incorporated under this chapter, shall be subject to the provisions of the fifty-second and fifty-third chapters of the Code, so far as the same are applicable.

Words "joint-stock company" include what. Ch. 53, § 1.

§ 2. Such companies may be incorporated for the following purposes:

I. For manufacturing, mining or insuring.
 II. For constructing and maintaining lines of magnetic telegraph, telephones, lines of piping or tubing for the transportation of oils or other fluids; and carrying on the business properly pertaining to such works and improvements.

III. For establishing hotels, and springs companies, gas works, water works, ceme-

Joint-stock companies, formation; capital; agreement — Code, ch. liv, §§ 3-9.

ories, or building and loan associations, and transacting the business properly pertaining thereto.

IV. For universities, colleges, academies, seminaries, schools, or institutes, for the purpose of teaching any branch or branches of useful information or learning, or promoting religion, morality, military science or discipline; or the diffusion of knowledge, including library companies and literary and scientific associations.

V. For agricultural and industrial societies.

VI. For benevolent associations, societies and orders, including orphan, blind and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd fellows, improved order of red men, sons of temperance, good templars and knights of pythias, and all other associations, societies and orders of like character.

VII. For gymnastic purposes.

VIII. For railroads and other works of internal improvement.

IX. For banks of issue and circulation, and of discount and deposit, and for savings institutions.

X. And for any other purpose or business useful to the public for which a firm or co-partnership may be lawfully formed in this State.

Must be created by general laws. Const., art. XI, § 1. Existing companies may reincorporate. § 12, post.

§ 3. But this chapter shall not be construed to authorize the incorporation of any church or religious denomination, or of any company the object or one of the objects of which is to purchase lands and re-sell the same for profit.

§ 4. The capital stock shall be divided into shares, as prescribed by the fifteenth section of chapter fifty-three of the Code.

§ 5. The capital of a corporation formed under this chapter, except for railroad or canal purposes, shall not exceed five millions of dollars.

See § 4, supra.

§ 6. Any number of persons, not less than five, desiring to become a corporation for any purpose or business designated in the second section, except for railroad purposes, shall sign an agreement to the following effect: "The undersigned agree to become a corporation by the name of (here insert the name by which it is intended the corporation shall be known) for the purpose of (here describe fully and particularly the purpose for which the corporation is to be formed, and the kind of business intended to be carried on by it.) which corporation shall keep its principal office or place of business at, in the county of, and is to expire on the day of"

And for the purpose of forming the said corporation, we have subscribed the sum of dollars to the capital thereof, and have paid in on said subscription the sum of dollars; and desire the privilege of increasing the said capital, by the sale of additional shares from time to time, to dollars in all. The capital so subscribed is divided into shares of dollars each, which are held by the undersigned, respectively, as follows, that is to say: By (here insert the name of each incorporator, with his residence and the number of shares held by him.) And the capital to be hereafter sold is to be divided into shares of the like amount. Given under our hands this day of"

Special laws prohibited. Const., art. XI, § 1.

[A person who signs and acknowledges an agreement under above section becomes a subscriber for stock and is bound to pay for it, when company afterwards becomes incorporated and organized. *Exposition v. Rodes*, 37 W. Va. 738; s. c., 17 S. E. Rep. 305.

One who signs but does not acknowledge such agreement does not become a stockholder and is not bound for subscription therein made, unless he in some way acknowledges the existence of the corporation. *Id.*

If such agreement be not acknowledged at all prior to the issue of certificate, company does not obtain corporate existence as to those who, by such preliminary agreement, subscribe stock, and they are not compelled to pay such subscription. *Id.*

A fundamental variance in certificates from such preliminary agreement will relieve one who, by reason of it, subscribed to stock, from payment thereof. *Id.*

§ 7. No person shall be included as a corporation in any such agreement, by reason of any stock subscribed for by him, unless he has in good faith paid to the person who may have been appointed or agreed upon to receive the same for the intended corporation, at least ten per cent. of the par value of the said stock.

§ 8. The agreement shall be acknowledged by the several corporators before a justice, notary or judge; and such acknowledgment shall be certified by the officers before whom they are made. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to have been paid on the capital has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation.

§ 9. The agreement, with the acknowledgments and affidavits aforesaid, shall be delivered to the secretary of State, who shall thereupon issue to the said corporators his certificate under the great seal of the State, to the following effect: "I, A—— B——, secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affi-

davits, has been this day delivered to me, which agreement is in the words and figures following: (here insert). Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the day of, a corporation by the name and for the purposes set forth in the said agreement. Given under my hand and the great seal of the said State at, this day of

[Deed to a corporation may be executed before above agreement is executed, delivered in escrow, and take effect upon organization. Bank v. Lumber Co., 32 W. Va. 357; s. c., 9 S. E. Rep. 243.]

§ 10. When a certificate of incorporation shall be issued by the secretary of State, pursuant to this chapter, the corporators named in the agreement recited therein, and who have signed the same, and their successors and assigns, shall, from the date of the said certificate until the time designated in the said agreement for the expiration thereof, unless sooner dissolved according to law, be a corporation by the name and for the purposes and business therein specified. And the said certificate of incorporation shall be received as evidence of the existence of the corporation as aforesaid. Any corporation organized for any one or more of the purposes mentioned in the first and tenth subdivisions of the second section of this chapter may, by resolution, concurred in by a majority of all the stockholders, representing a majority of the capital stock, and entered upon its records, at a meeting specially called for the purpose, of which all the stockholders shall have had notice, agree to and adopt a new agreement, so as to enlarge or diminish the objects and purposes, within the limits of said two subdivisions of section two, for which such corporation may have been organized; or so as to increase or diminish the number of its shares of capital stock by consolidating or subdividing the same, but so that in no case shall any fractional share or shares of unequal value be created. A copy of such resolution, containing such new agreement, when acknowledged by such majority of the stockholders in the manner prescribed by the eighth section of this chapter, shall be delivered to the secretary of State, who shall thereupon issue his certificate in the form prescribed in the ninth section of this chapter, so far as the said form may be found applicable; and from thence such corporation shall be subject to such new agreement and certificate. And all the provisions of this chapter shall apply to such new certificates and to the corporations receiving the same in like manner as to original agreements and certificates of incorporation, except as herein otherwise provided.

§ 11. No corporation formed under this chapter except life insurance companies and

such as are formed exclusively for the purposes mentioned in the fourth, fifth, sixth, seventh, eighth and ninth clauses of the second section, shall continue for more than fifty years from the date of its certificate of incorporation. Any corporation heretofore formed under the general laws of this State and now in existence, may extend the time of its continuance beyond that limited in the agreement for its formation, for such additional time, not exceeding fifty years, as it may desire, in the manner following: The stockholders of such corporation may, at a general or special meeting, adopt a resolution to extend the time of the continuance of such corporation, for such time, not exceeding fifty years, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof, in person or by proxy, and voting for such resolution; but notice of the intention to offer such resolution must have been given by advertisement, published once a week for four successive weeks, in some newspaper of general circulation printed in this State. When such resolutions shall have been adopted by any corporation, the president thereof shall, under his signature and the common seal of the company, certify the resolution to the secretary of State, and the secretary, under his hand and the great seal of this State, shall issue to the company adopting such resolution a certificate reciting the resolution and declaring the proposed extension to be authorized by law, which certificate shall be received in all courts and places as evidence of the extension of the continuance of such corporation, and of the authority for the same. The provisions of sections seventeen, eighteen, nineteen and twenty of this chapter shall apply to such certificate.

§ 12. The stockholders of any incorporated joint-stock company now existing in this State (banks of circulation and companies incorporated for the construction of works of internal improvement excepted) may, by resolution in general meeting, accept the provisions of this and the preceding chapter of the Code. And thereupon a copy of the resolution shall be filed with the secretary of State, together with a statement showing the name by which the corporation had theretofore been known, and the name, whether it be the same or a different one, by which it is intended it should be known thereafter; the business to be carried on; the place where such business is to be carried on, and where the principal office is to be kept; the time when the corporation is to expire, subject to the limitation contained in the eleventh section of this chapter; the amount of the whole capital; the amount of the capital paid in; the amount to which it is intended to reserve the privilege of increasing the same, and the par value of each share; which copy and state-

ment shall be certified by the president under his hand and the common seal of the corporation. And the secretary of State shall thereupon issue a certificate of incorporation under his hand and the great seal of the State, reciting the said resolution and statement, and declaring the said corporation to be thereafter, until the time mentioned in the said statement for the expiration thereof, a corporation by the name which it is intended it should thereafter bear, and for the purpose and business therein set forth, unless sooner dissolved according to law. Certificates of incorporation issued pursuant to this section shall be received as evidence of the existence of the corporations as therein declared; and the said corporations shall no longer be under their former charters, but shall have all the rights, privileges and powers conferred by this and the fifty-second and fifty-third chapters of the Code, and shall be subject to the liabilities, restrictions and regulations therein prescribed.

§ 13. A corporation, at the time when it accepts the provisions of this chapter, may change the par value of its shares, as the stockholders thereof in general meeting, or the board of directors under authority given them by the stockholders, may determine; in which case the statement to be filed as aforesaid with the secretary of the State shall show the proposed change, and the same shall have effect from the date of the certificate of incorporation.

§ 14. When a certificate of incorporation is issued pursuant to the twelfth section, the board of directors and officers then in office may continue to act in their respective capacities until the next annual meeting of the stockholders, and thereafter until their successors have been chosen and qualified, or until a general meeting, called pursuant to the forty-first section of chapter fifty-three of the Code, shall elect a new board or make such order in the matter as they deem right.

§ 15. When a certificate of incorporation is issued under the ninth section, the incorporators named in the agreement recited therein, or a majority of them, shall appoint the time and place for holding a general meeting of the stockholders to elect a board of directors, make by-laws, and transact any other business which may lawfully be done by the said stockholders in general meeting. The time appointed for the meeting shall not be less than twenty-one nor more than ninety days from the date of the certificate, and at least two weeks' notice of such meeting shall be given by advertisement in the manner prescribed in the forty-first section of chapter fifty-three of the Code.

See ch. 53, § 41, cross-references.

§ 16. After a certificate of incorporation has been issued pursuant to the ninth sec-

tion, and before a board of directors have been elected or qualified, additional shares of the capital stock may be disposed of, so that the maximum capital be not exceeded, in such manner, on such terms, at such times and places, and under the superintendence of such persons as the incorporators named in the agreement recited in such certificate, or those holding a majority of the shares, may appoint, but subject to the provisions of the twenty-third and the four following sections of chapter fifty-three of the Code.

Excessive subscriptions, how reduced. Ch. 53, § 27.

§ 17. The secretary of State shall carefully preserve in his office the agreements, resolutions and statements mentioned in the sixth and twelfth sections, and cause to be accurately recorded in a well-bound book, to be kept in his office, all certificates of incorporation, certificates of increase or reduction of capital stock, certificates of change of principal office, certificates of change of name, which he shall issue under this or the preceding chapter of this Code. If he omit to record any such certificate, or if any error be discovered in the record thereof, he shall forfeit for every such neglect or default not less than ten nor more than fifty dollars. At the end of every regular session of the legislature, he shall deliver to the clerk of the house of delegates an accurate abstract of every certificate of incorporation not before reported, which abstract shall show the name of the corporation, the purpose for which the corporation is formed, and the kind of business carried on, its principal office or place of business, when issued and when to expire, the name and residence of each incorporator, the amount of capital stock authorized, the amount subscribed and the amount paid in, and the par value of each share; and it shall be the duty of the clerk to cause said abstracts to be printed and bound with the acts of the session. If the said secretary or clerk fail therein, the party so in default shall forfeit not less than one nor more than fifty dollars.

§ 18. The secretary may charge a fee of four dollars for every such certificate issued by him; and for recording the original, or issuing a certified copy, a fee of fifty cents, or in lieu thereof fifteen cents for every hundred words; which fees shall be paid at the time the service is rendered by the person at whose instance it was done.

§ 19. The secretary may at any time issue a copy of such certificate, and such copy certified under his hand, and also the copy printed with the acts of the legislature, shall as evidence be equivalent to the original.

§ 20. The company shall cause the said certificate, within three months after it has been issued, or a copy thereof certified as aforesaid, to be delivered for record to the clerk of the county court in which the prin-

Increase or reduction, etc.; principal office; designation of agent — Code, ch. liv, §§ 21-30.

principal office or place of business of such company is kept, and the clerk of the county court shall record the same in his office. If such company fail therein, it shall be fined not exceeding one thousand dollars.

[Requirements of statute that a corporation shall record in a certain county the certificate of its incorporation, is a condition precedent, and the corporation has no power to transact any business until such conditions are complied with, and such corporation has really no existence until such certificate is so recorded. *Childs v. Hurd*, 32 W. Va. 68; s. c., 9 S. E. Rep. 362.]

§ 21. Any corporation formed, or which may hereafter be formed, or which has accepted or may accept the provisions of this chapter, may, by resolution at any general or special meeting of the stockholders thereof, make such increase or reduction in the number of shares of its capital stock, or the par value of each share, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof, and such holders being present either in person or by proxy, and voting for such increase or reduction. Provided, That notice be given by advertisement, published four successive weeks, in some newspaper of general circulation printed in this State, of the intention to offer such resolution.

§ 22. When such increase or reduction shall have been made by any such company, the president thereof shall, under his signature and the common seal of the company, certify the resolution to the secretary of State; and the secretary of State, under his hand and the great seal of this State, shall issue, to the company so making such increase or reduction, a certificate reciting the resolution and declaring the proposed increase or reduction to be authorized by law, which certificate shall be received in all courts and places as evidence of the change in the number or par value of the shares of the capital stock of such company, and of the authority to increase or reduce the same.

§ 23. The stockholders or directors of any corporation formed under or accepting the provisions of this chapter, may hold meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, out of this State, and may keep their principal office in any State or territory of the United States, or in the District of Columbia. But no meeting shall be held out of this State without the concurrence of persons holding a majority in value of the stock of the company, nor without reasonable notice.

§ 24. Every such corporation having its principal office or place of business in this State shall, within thirty days after organization, by power of attorney duly executed, appoint some person residing in the county in this State wherein its business is conducted, to accept service on behalf of

said corporation, and upon whom service may be had of any process or notice, and to make such return for and on behalf of said corporation to the assessor of the county or district wherein its business is carried on, as is required by the forty-first section of the twenty-ninth chapter of the Code. Every such corporation having its principal office or place of business outside this State shall, within thirty days after organizing, by power of attorney duly executed; appoint some person residing in this State to accept service on behalf of said corporation, and upon whom service may be had of any process or notice, and to make return of its property in this State for taxation as aforesaid. The said power of attorney shall be recorded in the office of the clerk of the county court of the county in which the attorney resides, and filed and recorded in the office of the secretary of State, and the admission to record of such power of attorney shall be deemed evidence of compliance with the requirements of this section. Corporations heretofore organized may comply with said requirements at any time within three months after the passage of this act. Any corporation failing to comply with said requirements within six months after the passage of this act shall forfeit not less than two hundred nor more than five hundred dollars, and shall, moreover, during the continuance of such failure, be deemed a non-resident of this State; and its property, real and personal, shall be liable to attachment in like manner as the property of non-resident defendants; any corporation failing so to comply within twelve months after the passage of this act shall, by reason of such failure, forfeit its charter to the State, and the provisions of section eight, chapter twenty, acts one thousand eight hundred and eighty-five, relative to notice and publication, shall apply thereto.

[Return by sheriff that he had served writ on a foreign insurance company by serving it on its "lawful attorney" is prima facie a good service and gives jurisdiction to render personal judgment. *Wagon Co. v. Ins. Co.*, 27 W. Va. 314.]

§ 30. Any corporation duly incorporated by the laws of any State, or territory of the United States, or of the District of Columbia, or of any foreign country, may, unless it be otherwise expressly provided, hold property and transact business in this State, upon complying with the requirements of this section, and not otherwise. Such corporation so complying shall have the same rights, powers and privileges, and be subject to the same regulations, restrictions and liabilities that are conferred and imposed by this and the fifty-second and fifty-third chapters of this Code, and by chapter twenty of the acts of one thousand eight hundred and eighty-five, on corporations chartered under the laws of this State. Every such corporation shall file with the secretary of

Foreign corporation; purchasers of franchise, etc.—Code, ch. liv, §§ 81, 82; ch. lxvi, § 9.

State a copy of its articles of association and of the law and authority under which it is incorporated. The secretary of State shall issue to every such corporation complying with the provisions of this section a certificate of the fact of its having done so, which certificate shall be filed and recorded in the office of the clerk of the county court of the county, or one of the counties, in which its business is conducted. Such corporation shall also file, in the said clerk's office, a copy of its charter, to be kept and preserved therein. Every railroad corporation doing business in this State under the provisions of this section, or under charters granted or laws passed by the State of Virginia, or this State, is hereby declared to be, as to its works, property, operations, transactions and business in this State, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporations. No railroad corporation which has a charter or any corporate authority from any other State, shall do business in this State as the lessee of the works, property or franchises of any other corporation or person, or otherwise; or bring or maintain any action, suit or proceeding in this State, until it shall, in addition to what is hereinbefore required, file in the office of the secretary of State, a writing, duly executed under its corporate seal, accepting the provisions of this section and agreeing to be governed thereby, and its failure so to do may be pleaded in abatement of any such action, suit or proceeding; but nothing herein contained shall be construed to lessen the liability of any corporation, which may not have complied with the requirements of this section, upon any contract or for any wrong. Every such corporation which shall do business in this State, without having complied with the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars for each month its failure so to comply shall continue. Prosecutions under this section shall be in the county in which the seat of government is. For every certificate issued under this section the secretary of State shall be paid by the corporation a fee of five dollars.

Service of summons on foreign corporation. Ch. 50, § 35.

[A corporation exists only in contemplation of and by force of law, and can have no legal existence beyond the State or sovereignty by which it is created. *Reese v. Newport, etc., Co.*, 32 W. Va. 164; s. c., 9 S. E. Rep. 212.

While a corporation by the same name may be chartered by two States clothed with the same

capacities and powers and for the same objects, and be exercising same powers and duties in both States, yet in law there would be two distinct corporations, one in each State, with only such corporate powers in each State as are conferred by its creation in this State. *Id.*

No corporation of one State can be made a domestic corporation of another by merely declaring that it shall be such. It must be chartered by the other State, and will then be a domestic corporation of that State without reference to its charter in a foreign State, and with such powers, duties and franchises as are conferred upon other domestic corporations. *Id.*

A contract made by a foreign corporation, before it has complied with statutory prerequisites to the right to do business in another State, will not, on that account, be held absolutely void, unless statute expressly so declares; if statute imposes a penalty upon the corporation for failing to comply with such prerequisites, such penalty will be deemed exclusive of any others. *Toledo, etc., Co. v. Thomas*, 33 W. Va. 566; s. c., 11 S. E. Rep. 37.

Above section does not make a contract made in this State by such corporations before compliance with said regulations absolutely void and "unenforceable in courts of this State." *Id.*

A foreign corporation doing business in this State, having no principal office or president or other chief officer resident therein, may be sued in any county wherein it does business, where the cause of action arose out of this State, if process can be legally served in such county. *Humphreys v. Newport, etc., Co.*, 33 W. Va. 135; s. c., 10 S. E. Rep. 39.]

§ 82. Whenever there has been since the first day of February, one thousand eight hundred and seventy-seven, or shall hereafter be, a sale of the works and property of any corporation, other than a railroad corporation, under a decree, mortgage or trust deed, and there be a conveyance to the purchaser of the same, said purchaser or purchasers shall become a corporation in the same manner and be entitled to the franchises of the old corporation in the same manner as is provided for railroad corporations in such cases in section seventy-two of this chapter, and the old corporation shall be ipso facto dissolved. But the purchaser at said sale shall not obtain the works constructed, or property acquired, after the making of the said deed of trust or mortgage.

CHAPTER LXVI.

Rights of Married Women.

Sec. 9. May vote as stockholder.

§ 9. (As amended February 16, 1893.) It shall be lawful for any married woman, being a stockholder of any bank, insurance company (other than mutual fire insurance companies), manufacturing company or other institution incorporated under the laws of this State, to vote at any election for directors and trustees, by proxy or otherwise, in such company of which she may be a stockholder.

Execution of deeds; attachments — Code, ch. lxxiii, §§ 4, 5; ch. cvi, § 1.

CHAPTER LXXIII.

Execution of Deeds.

Sec. 4. Form of certificate of acknowledgment.
5. Acknowledgment by corporation.

§ 4. When a husband and wife have signed a writing purporting to convey real estate, the wife may acknowledge the same together with or separately from her husband. If both acknowledge said writing at the same time, the certificate of such acknowledgments shall be in form or effect as follows:

State (territory or district) of
county of to-wit:

I,, a commissioner appointed by the governor of the State of West Virginia, for the said State of, (or the said county of or I,
....., a justice of the peace of the said county of or I,
....., a notary of the said county of or I, prothonotary (or clerk) of the court or county of (or other officer or person authorized to take acknowledgments by section three of this chapter, as the case may be),* do certify that and
his wife, whose names are signed to the writing above or hereto annexed, bearing date the day of, 18., have this day acknowledged the same before me in my said

Given under my hand this day of, 18...

If the wife acknowledge a deed or other writing separately from her husband, the certificate of her acknowledgment after the star in the foregoing form shall be in form or effect as follows: "do certify that
....., the wife of whose names are signed to the writing above (or hereto annexed) bearing date the day of, 18., has this day acknowledged the same before me in my said

Given under my hand this day of, 18...

If the acknowledgment be before a notary public without this State, he shall certify the same under his official seal.

§ 5. The certificate of acknowledgment of a corporation or joint-stock association may be in form or effect as prescribed in the next preceding section down to the star, and then as follows: "Do certify that personally appeared before me in my said and being by me duly sworn, (or affirmed) did depose and say that he is the president (or other officer or agent) of the corporation (or association), described in the writing above (or hereto annexed) bearing date the day of, 18., authorized by said corporation (or association), to execute and acknowledge deeds and other writings of said corporation (or association), and that the seal affixed to said writing is

the corporate seal of said corporation (or the seal of the said association as the case may be), and that said writing was signed and sealed by him in behalf of said corporation (or association) by its authority duly given. And the said acknowledged the said writing to be the act and deed of said corporation (or association)." Or if the corporation has no corporate seal, or the association has no seal, omit the words "seal affixed to said writing is the corporate seal of said corporation, (or the seal of said association, as the case may be)," and say "said corporation (or association) has no seal." And in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the word "executed."

[A paper purporting to be a deed of trust, reciting a corporation as grantor, and having affixed thereto the following attestation: "Witness the signature and seal of W. S., president said Blennerhasset Oil Company, and who is legally authorized by the board of directors of said company to make this grant, this day aforesaid. W. S. (Seal)," is not the deed of the corporation. *Rauch v. Oil Co.*, 8 W. Va. 36.]

Such a deed, however, relating merely to goods and chattels is valid, as a mortgage against creditors and subsequent purchasers, as soon as duly admitted and recorded in proper county. *Id.*

The seal of a corporation is not necessary to give validity to an agreement for the sale of real property. *Banks v. Poitiaux*, 3 Rand. (Va.) 136.]

CHAPTER CVI.

Attachments.

Sec. 1. Grounds of attachment.

Section 1. When any action at law or suit in equity is about to be or is instituted for the recovery of any claim or debt arising out of contract, or to recover damages for any wrong, the plaintiff at the commencement of the action or suit, or at any time thereafter and before judgment, may have an order of attachment against the property of the defendant, on filing with the clerk of the court in which such action or suit is about to be or is brought, his own affidavit or that of some credible person, stating the nature of the plaintiff's claim and the amount, at the least, which the affiant believes the plaintiff is justly entitled to recover in the action or suit, and also that the affiant believes that some one or more of the following grounds exist for such attachment.

First. That the defendant, or one of the defendants, is a foreign corporation, or is a non-resident of this State; * * *

Attachments, how served on corporation. Ch. 52, § 19. See ch. 52, § 1, subd. 3, cross-references.

[Where an attachment is sued out against a non-resident corporation, which has the equitable title to real estate attached in the cause, a personal decree may be rendered against such non-resident corporation, which appears in the cause. *Chapman v. R. R. Co.*, 18 W. Va. 185.]

CHAPTER CIX.

Quo Warranto.

- Sec. 6. Quo warranto; in what name awarded and against whom.
 7. Application for writ; when and how made.
 8. When and how writ to issue.
 9. Information in the nature of quo warranto.
 10. Service of writ or summons; how and by whom made.
 11. Proceedings on writ or information after service thereof.
 12. Trial, verdict and judgment.
 13. Appointment of receiver of property of corporation; when.

§ 6. A writ of quo warranto may be awarded and prosecuted in the name of the State of West Virginia, at the instance of the attorney-general, or prosecuting attorney of any county in any of the following cases, viz.:

First. Against a corporation for a misuse or non-use of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a certificate of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law.

Second. Against a person for the misuse or non-use of a privilege and franchise conferred upon him by or in pursuance of law.

Third. Against any person or persons acting as a corporation, without authority of law, * * *

* * * * *

§ 7. Whenever the attorney-general or prosecuting attorney of any county is satisfied that a cause exists therefor he may, at his own instance, or at the relation of any person interested, apply by petition to the circuit court of the county wherein the seat of government is, or of the county wherein the cause for the issuing of such writ arose, to have such writ issued, and shall state therein the reason therefor. Whenever such writ is issued at the relation of any person, the petition shall be to the circuit court of the county wherein the seat of government is, or of the county wherein the cause or any part thereof, for the issuing of such writ arose, as the relators may elect.

§ 8. If, in the opinion of the court, the reasons so stated in the petition are sufficient in law, it shall award the said writ and the same shall be signed by the judge of such court and attested by the clerk thereof. But if such writ be awarded at the relation of any person, it shall not be issued until the relator shall give bond with good security, to be approved by the court, in such penalty as the court shall prescribe, with condition that the relator will pay all such costs and expenses as may be incurred by the State in the prosecution of such writ, in case the same shall not be recovered from and paid by the defendant therein.

§ 9. In any case in which a writ of quo warranto would lie, the attorney-general or

prosecuting attorney of any county, at his own instance, or at the relation of any person interested, or any person interested may, in the name of the State of West Virginia, apply to any such court as is mentioned in the seventh section of this chapter, for leave to file an information in the nature of a writ of quo warranto for any of the causes and against any of the corporations, officer or persons mentioned in the sixth section of this chapter, and he shall, at the time of his application, present to the court the information he proposes to file. If, in the opinion of such court, the matters stated in such information are sufficient in law to authorize the same to be filed, an order shall be made filing the same and awarding a summons against the defendant named therein to answer such information. But if the leave to file such information be asked on the relation of any person, or by any person at his own instance, the summons thereon shall not be issued by the clerk until such relator or person shall give the bond and security required by the next preceding section. A copy of every such information, if not made out and filed therewith, shall be made out by the clerk, and such copy shall be delivered to the officer to whom the summons is delivered to be served, and shall be served on the defendant or one of the defendants named in the summons.

§ 10. Every such writ or summons shall be served as provided in chapter one hundred and twenty-one of this Code, and if it be against a corporation it shall be served on some of the persons mentioned in sections seven and eight of chapter one hundred and twenty-four of this Code; and if service thereof cannot otherwise be made upon any defendant named in such writ or summons, it may be made by publication as prescribed in said last-named chapter.

§ 11. If the defendant named in such writ or information, fail to appear after the service thereof as aforesaid, the court may hear proof of the allegations of the petition or information, and if such allegations be sustained, the court shall give judgment accordingly. But if the service be made by publication, the defendant against whom such judgment is rendered, upon giving bond and security as provided in section eight of this chapter, may have the judgment against him set aside, and make such defense as he or it may have thereto. If the defendant appear before the end of the term next after the service of summons, or thereafter before judgment is rendered against him, he may demur or plead not guilty, or both, to such writ, or demur or answer in writing, or both, to such information, and every allegation contained in such information which is not denied by such answer shall be taken as true, and no proof thereof shall be required.

§ 12. If upon the trial of such writ or information the defendant be found guilty, or not guilty, of any of the charges therein,

Actions, where brought; service of process — Code, ch. cxxiii, § 1; ch. cxxiv, §§ 7, 8, 11.

the verdict shall be "guilty," or "not guilty," as the case may be; but if he be found guilty as to a part of such charges only, the verdict shall be guilty as to such charges, and shall particularly specify the same, and as to the residue of such charges the verdict shall be "not guilty." Against a defendant so found guilty, the court shall give such judgment as is appropriate and authorized by law, and for the costs incurred in the prosecution of such writ or information, including an attorney's fee of not less than ten nor more than fifty dollars, to be fixed by the court.

§ 13. If by the judgment of the court rendered as aforesaid, a corporation, or pretended corporation, be dissolved, the court may appoint a receiver of the property of such corporation or pretended corporation, as provided in section twenty-eight of chapter one hundred and thirty-three of this Code, and may make all such other orders in relation thereto as may be necessary for the preservation and safe-keeping of such property.

CHAPTER CXXIII.

Place of Commencing Actions.

Sec. 1. Actions against corporations, where commenced.

Section 1. (As amended Laws 1897, chap. 46.) Any action at law or suit in equity, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

* * * * *

Second. If a corporation be a defendant wherein its principal office is, or wherein its mayor, president, or other chief officer resides; or if its principal office be not in this State, and its mayor, president, or other chief officer do not reside therein, wherein it does business; or

* * * * *

Sixth. If it be on behalf of the State in the name of the attorney-general or otherwise, wherein the seat of government is:

* * * * *

See ch. 52, § 1, subd. 3, cross-references.

[A foreign corporation doing business in this State, having no principal office or president or other chief officer resident therein, may be sued in any county wherein it does business, where the cause of action arose out of this State, if process can be legally served in such county. *Humphrey v. Newport, etc., Co.*, 33 W. Va. 135; s. c., 10 S. E. Rep. 39.]

CHAPTER CXXIV.

Process and Order of Publication.

Sec. 7. Service upon corporations.

8. Same.

11. Service by publication, when allowed.

§ 7. It shall be sufficient to serve any process against or notice to a corporation on its mayor, president or other chief officer, or any person appointed pursuant to law to accept

service of process for it, or in his absence, from the county or municipal corporation, to the officer of which the process is directed, it shall be sufficient to serve the notice or process * * * on the secretary, cashier, or treasurer, and if there be none such or he be absent, on a member of the board of trustees, directors or visitors. If there be not within the State any other person on whom there can be service as aforesaid, service on director, agent (including in the case of a railroad company, a depot or station agent in actual employment of the company) or other officer of the corporation against which the case is, shall be sufficient.

Service of summons in justice's court. Ch. 50, See, also, ch. 52, § 1, subd. 3, cross-references.

[Process against a corporation may be served on any person appointed to accept service, if made within county of such person's residence. *Frazier v. K. & M. Ry. Co.*, 21 S. E. Rep. 723.

Where a return fails to show on whom service was made, service is void. *Id.*]

§ 8. It shall be sufficient service of any process on, or notice to a corporation which shall have been formed, or which may be hereafter formed under, or which has accepted, or which may hereafter accept, the provisions of chapter fifty-four of this Code, and which, within the time prescribed by the twenty-fourth section of said chapter, shall fail to comply with the said chapter, if a copy of such process or notice be delivered by a proper officer or person to any person at or in charge of its principal office or place of business; or such corporation may be proceeded against by order of publication.

See ch. 52, § 1, subd. 3, cross-references.

[A foreign corporation doing business in this State, having no principal office or president or other chief officer resident therein, may be sued in any county wherein it does business, where the cause of action arose out of this State, if process can be legally served in such county. *Humphreys v. Newport, etc., Co.*, 33 W. Va. 135; s. c., 10 S. E. Rep. 39.]

§ 11. On affidavit * * * that the defendant is a corporation, and that no person can be found in the county upon whom the process can be legally served, an order of publication may be entered against such defendant. * * * Any order under this section may be entered either in court or at the rules. In a proceeding by petition, there may be an order of publication in like manner as in a suit in equity.

See ch. 52, § 1, subd. 3, cross-references.

CHAPTER CXXV.

Pleadings.

Sec. 41. Not necessary to prove corporate existence, when.

§ 41. * * * Where a plaintiff or defendant sues or is sued as a corporation, it shall

Receivers; executions — Code, ch. exxxiii. § 28; ch. cxi. § 1; Act, 1887, ch. 63.

not be necessary to prove * * * the existence of such corporation, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying * * * the existence of such corporation. A plea putting in issue the existence of a corporation, shall be sufficient if it be in form or effect as follows:

"And the said defendant for plea says, that the plaintiff (or defendant, as the case may be) is not a corporation, as in the plaintiff's declaration is alleged."

See ch. 52, § 1, subd. 3, cross-references.

CHAPTER CXXXIII.

Appointment of Receivers.

Sec. 28. When special receiver may be appointed.

§ 28. A court of equity may in any proper case pending therein, in which the property of a corporation, firm or person is involved, and there is danger of the loss or misappropriation of the same or a material part thereof, appoint a special receiver of such property or of the rents, issues and profits thereof, or both, who shall give bond with good security to be approved by the court, or by the clerk thereof, for the faithful performance of his trust and for paying over and accounting for, according to law, all

such moneys as may come into his hands by virtue of his appointment. But no such receiver shall be appointed of any real estate, or of the rents, issues or profits thereof until reasonable notice of the application therefor has been given to the owner or tenant thereof. A judge of such court in vacation may appoint such receiver of any such property, except real estate and the rents, issues and profits thereof.

See ch. 52, § 1, subd. 3, cross-references; ch. 53, § 58.

[A corporation with assets exceeding liabilities by 25 per cent., held, not insolvent, so that a trust deed executed by it would be a general assignment for the benefit of creditors. *Coaldale Min. & Mfg. Co. v. Clark*, — S. E. Rep. 294.]

Right of a stockholder to be made a party defendant to an action for the appointment of a receiver. *Kanawha Coal Co. v. B. & W. Coal Co.*, 29 S. E. Rep. 514. Propriety of such appointment. *Id.*

CHAPTER CXL.

Executions for Specific Property.

Sec. 1. Execution against corporations.

Section 1. Against a corporation such executions may issue as against a natural person. * * *

See ch. 52, § 1, subd. 3, cross-references.

SPECIAL LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO THE CODE OF 1887.

1. Wages of operatives and laborers.
2. Regulating payment of wages and prohibiting excessive charges for goods and supplies.
3. Non-residents not to be employed to perform police duty.
4. Authorizing the attorney-general to institute quo warranto proceedings.

Act 1.

AN ACT in relation to wages of operatives and laborers.

[Acts 1887, ch. 63; Code 1887, pp. 983-4.]

Section 1. That all persons, firms, corporations, or associations in this State, engaged in mining coal, ore or other minerals, or mining and manufacturing them, or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employes as provided in this act.

§ 2. All persons, firms, companies, corporations or associations engaged in the business aforesaid, shall settle with their employes at least once in every two weeks, unless otherwise provided by special agreement, and pay them the amount due them for their work or services in lawful money of the United States, or by cash order as

described and required in the next succeeding section of this act. Provided, That nothing herein contained shall affect the right of an employe to assign the whole or any part of his claim against his employer.

§ 3. That it shall not be lawful for any person, firm, company, corporation, or association engaged in the business aforesaid, their clerk, agent, officer or servant, in this State, to issue for the payment of labor any order or other paper whatsoever, unless the same purports to be redeemable for its face value in lawful money of the United States, bearing interest at the legal rate, made payable to employe or bearer and redeemable within a period of thirty days by the person, firm, company, corporation, or association, giving, making or issuing the same. And any person, firm, company, corporation or association, engaged in the business aforesaid, their clerk, agent, officer, or servant, who shall issue for payment of labor any paper or order other than the one herein specified, in violation hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor exceeding one hundred dollars, in the discretion of the court.

Laborers' wages; police duty — Acts, 1891, ch. 76; 1893, ch. 42.

§ 4. That from and after the passage of this act, it shall be unlawful for any person, firm, company, corporation, or association, engaged in mining or manufacturing, either or both as aforesaid, and who shall likewise be interested directly or indirectly in merchandising as owner or otherwise in any money, per cent., profit, or commission arising from the sale of any such merchandise, their clerks, servants, officers or agents, to knowingly and wilfully sell or cause to be sold to any employe, any goods, merchandise or supplies whatsoever, for a greater per cent. of profit than merchandise and supplies of like character, kind, quality and quantity are so sold to other customers buying for cash, and not employed by them; and shall any person or member of any firm, company, corporation, or association, his or their clerk, agent or servant, violate this section, then and in that case, such person, firm, company, corporation or association, shall collect for such merchandise and supplies only the price for which like merchandise and supplies are sold by them to such other customers as aforesaid buying for cash; and moreover shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding one hundred dollars nor less than twenty-five dollars.

§ 5. That if any firm, company, corporation, or association, shall refuse for the space of twenty days to settle and pay any of their said employes at the intervals of time as provided in section two of this act, or shall neglect or refuse to redeem any cash orders herein provided for, within the time specified, if presented, and suit should be brought for the amount overdue and unpaid, judgment for the amount of said claim proven to be due and unpaid, with legal interest thereon until paid, shall be rendered in favor of the plaintiff in such actions. Provided further, That the cash order herein provided for, given for payment of labor, if the laborer continues to hold the same, in case of the insolvency of the company, or person, or firm or corporation giving same, such laborer shall not lose his lien and preference under existing laws.

Act 2.

AN ACT regulating payment of laborers' wages and prohibiting excessive charges for goods and supplies.

[Acts 1891, ch. 76.]

Section 1. It shall be unlawful for any corporation, company, firm or person, engaged in any trade or business, either directly or indirectly, to issue, sell, give or deliver, to any person employed by such corporation, company, firm or person, in payment of wages due such laborer, or as advances for labor not due, any scrip, token, draft, check, or other evidence of indebtedness, payable or redeemable otherwise than in lawful

money; and if any such scrip, token, draft, check or other evidence of indebtedness, be so issued, sold, given or delivered to such laborer, it shall be construed, taken and held in all courts and places, to be a promise to pay the sum specified therein in lawful money by the corporation, company, firm or person, issuing, selling, giving or delivering the same to the person named therein, or to the holder thereof. And the corporation, company, firm or person so issuing, selling, giving or delivering the same, shall, moreover, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, and, at the discretion of the court, the officer or agent of the corporation, company, or firm, or the person issuing, selling, giving or delivering the same, may be imprisoned, not less than ten nor more than thirty days.

§ 2. If any corporation, company, firm or person, shall coerce or compel, or attempt to coerce or compel an employe in its, their or his employment, to purchase goods or supplies in payment of wages due him, or to become due him, or otherwise, from any corporation, company, firm or person, such first-named corporation, company, firm or person, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in the preceding section. And if any such corporation, company, firm or person, shall directly or indirectly, sell to any such employe in payment of wages due or to become due him, or otherwise, goods or supplies at prices higher than the reasonable or current market value thereof at cash such corporation, company, firm or person, shall be liable to such employe, in a civil action, in double the amount of the charges made and paid for such goods or supplies, in excess of the reasonable or correct value in cash thereof.

§ 3. It shall be the duty of every court having jurisdiction in criminal cases in which grand juries are empaneled, to give this act in charge to the grand jury.

Act 3.

AN ACT declaring who is not to be employed to perform police duty.

[Acts of 1893, ch. 42.]

Section 1. It shall be unlawful for any officer in this State, to knowingly engage or employ any person not a bona fide resident of West Virginia at the time of such employment, to do or perform police duty of any sort therein, or in any way to aid or assist in the execution of the laws of this State.

§ 2. It shall be unlawful for any corporation, company, firm or person, under any circumstances, to knowingly engage or employ any person not a bona fide resident of this

Who to perform police duty — Acts, 1893, ch. 42.

State, at the time of such employment to do or perform police duty of any sort therein, or in any way to aid or assist in the execution of the laws of this State.

§ 3. It shall be unlawful for any person not a bona fide resident of this State, as aforesaid, to do or perform, or to attempt to do or perform, any sort of police duty in this State, or, in any way, to aid or assist, or attempt to aid or assist, in the execution of the laws thereof. Any officer, corporation, company, firm or person, violating any of the provisions of this, or either of the two preceding sections, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than five hundred nor more than five thousand dollars, and may at the discretion of the court be imprisoned in the county jail of the county in which the offense is committed not exceeding twelve months.

§ 4. All persons violating any of the provisions of sections two and three of this act shall be taken and deemed to be rioters, and shall be proceeded against in all respects as such, as provided in chapter one hundred and forty-eight of the Code of West Virginia. And all the provisions of sections one, two, three, four, five and six, of said chapter, shall be applicable to said proceedings. If any person be killed by one or more rioters engaged with him at the time of such riot, such rioter or rioters shall be guilty of murder and punished as provided by law in other cases of murder: Provided, That nothing in this act contained shall be so construed as to interfere with the right

and duty of the governor to call upon the president of the United States for aid in the enforcement of the laws, in cases provided for in the Constitution.

Act 4.

Senate Joint Resolution No. 17.

Authorizing and instructing the attorney-general of this State to institute such legal proceedings, by quo warranto, or otherwise, in any of the courts of this State having jurisdiction, against all companies having been granted special charters, to a forfeiture of their charter and chartered rights.

Whereas, There has been granted by former legislatures to various companies, special rights and privileges, and said companies having violated their chartered rights and franchises, which has worked an injury and damage to the manufacturing and producing interests of the State; therefore, be it resolved by the legislature of West Virginia:

That the attorney-general of this State, on the complaint of twenty-five citizens who may be aggrieved, be and is hereby authorized and instructed to institute such legal proceedings by writ of quo warranto, or otherwise, in any of the courts of this State having jurisdiction, against any of said companies, for a forfeiture of their charter and chartered rights in so far as same are contrary to law, or have been lost by non-user or otherwise.

(Adopted February 13, 1895.)

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WISCONSIN.

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WISCONSIN.

CONSTITUTION OF WISCONSIN — 1848.

PROVISIONS RELATING TO CORPORATIONS.

ARTICLE I.

Declaration of Rights.

- Sec. 12. Laws impairing obligation of contracts prohibited.
13. Private property not to be taken without compensation.

ARTICLE IV.

Legislative.

- Sec. 31. Legislature prohibited from enacting special or private laws in certain cases.
32. Legislature shall provide general laws for such cases.

ARTICLE VIII.

Finance.

- Sec. 3. Credit of State not to be loaned in aid of corporations.

ARTICLE XI.

Corporations.

- Sec. 1. Corporations without banking powers to be formed under general laws.
4. Creation of banks.
5. Same.

ARTICLE I.

Declaration of rights.

- § 12. No * * * law impairing the obligation of contracts, shall ever be passed;
* * *

Laws creating corporations may be altered or repealed. Art. XI, § 1, and note.

[Under the decision of the United States Supreme Court in *Dartmouth College v. Woodward*, and subsequent cases, this court must hold that charters granted to private corporations, including railroad companies, are contracts. *Atty.-Gen. v. Ry. Co.*, 35 Wis. 428.

While a statute, making railroad companies liable to laborers employed by contractors in building their roads, is in force, contracts for such labor are let. Held, that the right of such laborers against the company become vested and cannot be impaired by subsequent legislation. *Streubel v. R. R. Co.*, 12 Wis. 67.

A statute conferring a franchise is not to be regarded as a contract on part of State unless

such was intention of legislature. *Chaplin v. Crusen*, 31 Wis. 209.

Where a charter granted by legislature, or the Constitution, or a law of the State in force when such charter was granted, reserves to the legislature power to alter and amend or withdraw any franchise or privilege granted by such charter, this reservation qualifies the grant; and a subsequent exercise of the reserved power is not an act impairing obligation of a contract. *Ry. Co. v. Supervisors*, 35 Wis. 257.

Corporations are subject to such rulings and regulations as the legislature may see fit to adopt. *Ry. Co. v. Milwaukee*, 72 N. W. Rep. 1118.]

§ 13. The property of no person shall be taken for public use without just compensation.

[Incidental injury to property is not a taking of it. *Alexander v. Milwaukee*, 16 Wis. 247. And a landowner is not entitled to compensation from railroad company for consequential injury to his lands unless there has been an actual taking or physical interference with some part of it. *Heiss v. R. R. Co.*, 69 Wis. 555; s. c., 34 N. W. Rep. 916. See *Hanlin v. Ry. Co.*, 61 Wis. 515; s. c., 21 N. W. Rep. 623.

The question of necessity is for the legislature to decide. *Smeaton v. Martin*, 57 Wis. 364; s. c., 15 N. W. Rep. 403.

A city council has no power to give a railroad right to use a street without making compensation to abutting owners. *Pomeroy v. R. R. Co.*, 16 Wis. 640.

Just compensation is a condition precedent to the delegation of the power to take. *Sherman v. R. R. Co.*, 40 Wis. 645; *Shepardson v. R. R. Co.*, 6 id. 605; *Loop v. Chamberlain*, 20 id. 135; *Thlen v. Voegtlander*, 3 id. 461.]

ARTICLE IV.

Legislative.

§ 31. The legislature is prohibited from enacting any special or private laws in the following cases:

* * * * *
Seventh. For granting corporate powers or privileges, except to cities.

Above section is an amendment, adopted in 1871.

[An act extending the life of a corporation created by special act before above amendment, is not the granting of corporate powers and privileges within meaning of that amendment, which prohibits the enactment of special or private laws for that purpose. *Imp. Co. v. Holway*, 87 Wis. 584; s. c., 59 N. W. Rep. 126.

Corporations — Const., Art. iv. § 32; Art. viii, § 3; Art. xi, §§ 1, 4, 5.

This section relates only to acts of incorporation thereafter to be granted. It does not impair the power of alteration and repeal reserved by Constitution in respect to charters granted when this amendment was adopted. *Atty.-Gen. v. R. R. Cos.*, 35 Wis. 425.

No corporation, except cities, can now be created by special statutes, and charters existing under general statutes, passed since the adoption of this amendment, can be amended by general laws only. *Boom Co. v. Reilly*, 44 Wis. 295.]

§ 32. The legislature shall provide general laws for the transaction of any business that may be prohibited by section thirty-one of this article, and all such laws shall be uniform in their operation throughout the State.

Above section is an amendment, adopted in 1871. See note to preceding section.

ARTICLE VIII.

Finance.

§ 3. The credit of the State shall never be given, or loaned, in aid of any individual, association, or corporation.

[This section is a limitation upon the power of the State itself, and not a prohibition upon the legislature to authorize municipalities to loan their credit. *Clark v. Janesville*, 10 Wis. 136.]

ARTICLE XI.

Corporations.

Section 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts, enacted under the provisions of this section may be altered and repealed by the legislature at any time after their passage.

See art. I, § 12. Organization of corporations. §§ 1771-1791. Creation of banks. Art. XI, §§ 4, 5. Special or private laws prohibited. Art. IV, §§ 31, 32. Amendments must be by general laws. *Id.*, note. Powers may be restricted. § 1768.

[All special acts of the legislature granting corporate powers are subject to alteration or repeal. *Pratt v. Brown*, 3 Wis. 603; *Plank Road Co. v. Reynolds*, *id.* 287; *Blair v. R. R. Co.*, 20 *id.* 254; *State v. Gas Light Co.*, 29 *id.* 454.

Reservation of power to alter, amend or withdraw any franchise or privileges granted by charter qualifies the grant, and subsequent exercise of the reserve power is not within prohibition of Federal Constitution, as an act impairing the obligation of a contract. *Ry. Co. v. Supervisors*, 35 Wis. 257; *Atty.-Gen. v. Ry. Co.*, *id.* 425.

A corporate charter cannot, under power to alter, be changed into one of an entirely different

kind, but may be changed in detail, so long as the identity of the corporation remains. *Id.*; *Huckley v. R. R. Co.*, 38 Wis. 194; *Ackley v. Ry. Co.*, 36 *id.* 252; *Pelk v. Ry. Co.*, 94 U. S. 164; *Munn v. Illinois*, *id.* 113.

This power to alter or repeal charters of corporations does not affect their rights in their property, other than the franchises, but such rights remain inviolable. *Atty.-Gen. v. Ry. Co.*, *supra*. It seems that valid alterations in its charter are obligatory upon a private corporation without its assent thereto. But if otherwise, it must accept, or discontinue its operations as a corporate body. *Id.*

This section is aimed at the evils of special legislation. *Clark v. Janesville*, 10 Wis. 136.

Fact that one legislature has conferred upon a city or county power to grant to an existing corporate body a franchise, or to create a corporation with certain franchises and powers, does not deprive a subsequent legislature of its power, under above section, to take away the power so granted or to alter or repeal the acts done under such delegated authority. *State v. Hilbert*, 72 Wis. 184; *s. c.*, 39 N. W. Rep. 326.

Where it is alleged that act of legislature or of a municipality granting a franchise to a corporation creates an irrevocable contract, such act will be strictly construed in favor of the State or municipality. *Id.*

A corporation that had used its name for ten years before plaintiff corporation, with a similar name, commenced doing business in the State, could not be held to have wrongfully used the name of the plaintiff. *Foresters v. Commr. of Ins.*, 73 N. W. Rep. 326.]

§ 4. The legislature shall not have power to create, authorize or incorporate, by any general, or special law, any bank or banking power or privilege, or any institution or corporation having any banking power or privilege whatever, except as provided in this article.

See art. IV, §§ 31, 32; art. XI, §§ 1, 5.

§ 5. The legislature may submit to the voters, at any general election, the question of "bank," or "no bank," and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders: Provided, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State, at some general election, and been approved by a majority of the votes cast on that subject at such election.

See art. XI, §§ 1, 4. Corporation not to engage in banking business without authority. § 2021.

[Above section construed. *Roane Iron Co. v. Wisconsin Trust Co.*, 74 N. W. Rep. 818.]

STATUTES OF WISCONSIN—1889.

PART I.

Internal Administration of the State.

TITLE IX. COUNTY GOVERNMENT.

CHAPTER XXXVII.

Of County Officers.

Sec. 763. County register shall record all certificates of corporations.

§ 763. He [the register of deeds] shall keep a book in which shall be recorded all certificates of organization of corporations, and all amendments thereof filed or required by law to be recorded in his office, and an alphabetical index of the names of such corporations, with a reference to the number and page of the volume where such writings are recorded respectively.

Corporation must file its articles. § 1772 (7).
Certified copy as evidence. § 4181.

TITLE XIII. TAXATION.

CHAPTER XLVIII.

Assessment.

- Sec. 1034. Property subject to assessment.
1038. Property exempt from taxation.
1040. Personal property liable to taxation.
1041. Residence of corporations for purpose of taxation.
1042. Bank stock, where taxed.

§ 1034. Taxes shall be levied upon all property in this State, except such as is exempted therefrom.

Corporate stock is personal property. § 1751.
See Act 4, relating to special assessments on corporate property.

[Taxation of railroads by requiring payment of a license fee on their gross earnings does not violate the constitutional rule of uniformity. *Kneeland v. Milwaukee*, 15 Wis. 454; *R. R. Co. v. Supervisors*, 9 id. 431.
As to distinction between assessment and taxation, see *Hale v. Kenosha*, 29 Wis. 599.]

§ 1038. The property in this section described is exempt from taxation, to-wit:

9. Stock in any corporation in this State which is required to pay taxes upon its property in the same manner as individuals.

13. All the personal property of all insur-

ance companies, that now are or shall be organized or doing business in this State.

14. The track, right of way, depot grounds and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad in this State belonging to any railroad company, including pontoon or pile and pontoon railroads, and shall henceforth remain exempt from taxation for any purpose, except that the same shall be subject to special assessment for local improvements in cities and villages; and all lands owned or claimed by any such railroad company not adjoining the track of such company shall be subject to all taxes. The provisions of this subdivision shall not apply to any railroad that now is or shall be operated by horse, cable or electrical power, whether now or hereafter constructed, in any city or village.

22. The property of any corporation or association formed under the laws of this State, and exclusively for the purpose of manufacturing oxide of zinc or metallic zinc from native ores of the State, shall be exempt from taxation for a period of three years.

[The cumulative profits of a bank, which have never been divided among the stockholders, but have been retained for banking purposes, are not a part of the capital stock in such sense as to be exempt from the rules of taxation applicable to other taxable property. *Bank v. Milwaukee*, 18 Wis. 281.]

As to what railroad property is exempt, and what not exempt, see *Ry. Co. v. Milwaukee*, 34 Wis. 271; *Brightman v. Kirner*, 22 id. 54; *Ry. Co. v. Supervisors*, 48 id. 666; s. c., 5 N. W. Rep. 3; *Ry. Co. v. Supervisors*, 29 Wis. 116.

Acts exempting property from taxation are to be strictly construed. *Weston v. Supervisors*, 44 Wis. 242.]

§ 1040. (As amended April 14, 1893.) All personal property shall be assessed in the assessment district where the owner resides, except as hereinafter provided. If such owners be non-residents of the State, or foreign associations or corporations, but having an agent residing in this State in charge of such property, then the same shall be assessed in the district where such agent resides; otherwise in the district where the same is located, except as hereinafter provided. * * * No change of location or sale of any personal property after the first day of May in any year shall affect the assessment made in such year. * * *

Corporate stock is personal property. § 1751.

[As to what constitutes residence for purpose of taxation, see *Kellogg v. Oshkosh*, 14 Wis. 623. The franchises of a corporation are to be regarded, for the purposes of taxation, as personal property. *State v. Anderson*, 90 Wis. 550; s. c., 63 N. W. Rep. 746. And franchises and other personal property may be assessed as an entirety. *Id.*]

§ 1041. The residence of an incorporated company, for the purposes of the preceding section, shall be held to be in the assessment district where the principal office or place of business of such company shall be.

§ 1042. All the stock of every bank or banking association, whether organized under authority of any law of this State or of any act of the Congress of the United States, and all the capital stock of every person, association or other corporation whatever, engaged in the business of banking, buying and selling exchange, and receiving deposits, shall be assessed and taxed in the county and assessment district where such bank or banking association or where such person, association or corporation is located for the transaction of business.

[See *Ruggles v. Fon du Lac*, 53 Wis. 436; s. c., 10 N. W. Rep. 565. An act for the assessment of the capital stock of banks, though impairing the rule of uniformity, is valid, as it conforms to the law of congress, which is supreme. *Van Slyke v. State*, 23 Wis. 655.]

TITLE XIX. CORPORATIONS.

Ch. 85. Of general provisions relating to corporations.

86. Of the organization of corporations.

94. Of banks and banking.

CHAPTER LXXXV.

General Provisions.

- Sec. 1748. General powers.
 1749. Quorum of directors; of stockholders.
 1750. Principal office to be in State; books to be produced; statement of assets to be filed.
 1750a. Foreign corporation to appoint attorneys for process.
 1751. Capital stock is personal property; how transferred.
 1752. Transfer of stock on books, how compelled.
 1753. Consideration for which stock may issue.
 1754. Subscriptions, how called in.
 1755. Stockholders' liability on diminution of capital stock.
 1756. Liability of stockholder, how released.
 1757. Stockholder may inspect books; creditor entitled to information.
 1758. Stockholder entitled to credit in actions against them.
 1759. Record of proceedings, how kept.
 1760. Every stockholder entitled to one vote for each share.
 1761. Consent to meetings not regularly called.
 1762. Election of officers, how called and held.
 1763. Surrender of corporate rights.
 1764. Continuance after dissolution.
 1765. Dividends not to be paid, when.
 1766. Examination of corporations by attorney-general.

Sec. 1767. Restrictions upon use of corporate property.

1768. Legislature may restrict corporate power.

1769. Stockholders' liability; wages of employees.

1770. Corporation may maintain action against stockholders.

1770a. Foreign manufacturing corporations to file statement with secretary of State; penalty for failure.

§ 1748. Every corporation organized under any general or special law, when no other provision is specially made by law, or by its articles of organization, shall have the following powers:

Powers are exercised by directors. § 1776.

General powers. § 1775. Legislature may restrict. § 1768.

[Corporations organized under chapter 144, Laws 1872, are now governed by these statutes. In re *Klaus*, 67 Wis. 401; s. c., 29 N. W. Rep. 582.]

1. To make all contracts necessary and proper to effect its purposes and conduct its business.

Cannot engage in banking business. § 2021. May purchase stock in other corporations, when. § 1775.

[It is sufficient consideration for the assignment of a mining option to a corporation that stockholders become liable to pay assessments to develop the property and do pay money for that purpose. *Kountz v. Gates*, 78 Wis. 415; s. c., 47 N. W. Rep. 729.

Contract by a promoter may be adopted by the corporation after its organization. *Pratt v. Match Co.*, 89 Wis. 406; s. c., 62 N. W. Rep. 84.

After articles of incorporation are filed for record, but before organization, the signers of the articles may contract for materials to carry on the business. *Badger Paper Co. v. Rose*, 70 N. W. Rep. 302.

The State alone can object that a corporation in buying certain claims acted ultra vires. *Farrrell Co. v. Wolf*, 70 N. W. Rep. 289.]

2. To sue and be sued, to appear and defend in all actions and proceedings in its corporate name, to the same extent as a natural person.

Corporation may maintain action against stockholders. § 1770. Actions against corporations, place of trial. § 2619. Manner of commencing. § 2637. Injunctions not to be granted, when. § 2780. Receivers. §§ 2787, 2787a, 3246. Special proceedings against corporations. §§ 3204-3250. Actions in justice's court. § 3601. Evidence. §§ 4181, 4181a, 4199. Limitation of actions. § 4252. Criminal proceedings against. §§ 4734, 4735. Foreign corporation may sue and be sued. §§ 3207, 3208. But must have attorney for process. § 1750a. Attachment. §§ 2731, 2736. Action against bank. § 3220. Action to vacate charter. §§ 3240-3250.

[A corporation may be sued for a trespass quare clausum fregit. *Merriman v. Mach. Co.*, 86 Wis. 142; s. c., 56 N. W. Rep. 743. And for negligent injury to employe through negligence of fellow servant. *Molaske v. Coal Co.*, 86 Wis. 220; s. c.,

Corporate powers — Stats., § 1748.

56 N. W. Rep. 475. For a death of an employe through negligence of a superintendent. *Faerber v. Lumber Co.*, 86 Wis. 226; s. c., 56 N. W. Rep. 747. Or caused by defective appliances. *Thompson v. Johnston Bros. Co.*, 86 Wis. 576; s. c., 57 N. W. Rep. 298. For breach of covenant of lease. *Milling Co. v. Howitt*, 86 Wis. 270; s. c., 56 N. W. Rep. 784. For breach of warranty of machinery. *Larson v. Aultman & Taylor Co.*, 86 Wis. 281; s. c., 56 N. W. Rep. 915. For goods sold and delivered. *Distilling Co. v. Importing Co.*, 86 Wis. 352; s. c., 56 N. W. Rep. 864. For services rendered. *Cummings v. Realty Co.*, 86 Wis. 382; s. c., 57 N. W. Rep. 43; *Print. Co. v. Pub. Co.*, 87 Wis. 127; s. c., 58 N. W. Rep. 238; *Maher v. Lumber Co.*, 86 Wis. 530; s. c., 57 N. W. Rep. 357; *Brunnell v. Saw-Mill Co.*, 86 Wis. 587; s. c., 57 N. W. Rep. 364. For ejectment. *Weld v. Mfg. Co.*, 86 Wis. 549; s. c., 57 N. W. Rep. 378; *Same v. Same*, 86 Wis. 552; s. c., 57 N. W. Rep. 374. For salary of officer. *Littlefield v. Bergenthal Co.*, 87 Wis. 394; s. c., 58 N. W. Rep. 743. To restrain and abate nuisances. *Price v. Creamery Co.*, 86 Wis. 536.

A corporation held liable for negligence whose building foreman allowed excessive weight of snow to be left upon the roof. *Johnson v. Bank*, 79 Wis. 414; s. c., 48 N. W. Rep. 712.

In an action by a corporation against its president or treasurer for negligence or misconduct in office, held to be an equitable action. *B. & L. Assn. v. Childs*, 82 Wis. 460; s. c., 52 N. W. Rep. 600.

Summons and complaint naming defendant as W. S. Railway Company, instead of W. S. Railroad Co., allowed to be amended, although W. S. Railway Company existed. *Parks v. Ry. Co.*, 82 Wis. 219; s. c., 52 N. W. Rep. 92.

Denial by a corporation of an averment that it was incorporated in a certain manner is bad on demurrer. *Brown v. Gas Co.*, 21 Wis. 51. An express company may deny averment of negligence by its servants. *Boorman v. Am. Ex. Co.*, 21 Wis. 152. But a corporation cannot so deny facts necessarily within the knowledge of its officers. *Mills v. Jefferson*, 20 Wis. 50.

If the name of a corporation be changed, it must sue and be sued, in respect to its prior rights and liabilities, by its new name. *Dousman v. Milwaukee*, 1 Pin. 81.

Secretary of a defunct corporation may testify as to facts which worked its dissolution. *Combes v. Keyes*, 89 Wis. 297; s. c., 62 N. W. Rep. 89. But no costs can be awarded in favor of such a corporation. *Id.*

A defendant who pleads a counterclaim in an action by a corporation is estopped to deny plaintiff's corporate existence. *Imp. Co. v. Holway*, 85 Wis. 344; s. c., 55 N. W. Rep. 418.]

3. To have a common seal, and alter the same at pleasure.

Corporate deeds must be sealed. § 2216. How seal must be impressed upon instrument. See Act of 1895, at p. 36.

[The seal of a corporation is not essential to the validity of the power of attorney to confess judgment. *Ford v. Hill*, 66 N. W. Rep. 115.]

4. To elect or appoint in such a manner as shall be fixed by its by-laws, all necessary officers, agents and servants, define their duties and obligations, fix their compensation and fill vacancies therein, and to establish branch offices or places of business in this State or elsewhere.

Foreign corporation to appoint attorney for process. § 1750a. Election of officers. § 1762. Record of, to be kept. § 1759. Corporation managed by directors. § 1776. Officers to execute convey-

ances. § 2216. Crimes by corporation officers; penalties. §§ 4435, 4436. Process to be served on officer or agent. § 2637. Jurisdiction of court over officers. § 3237.

[President of corporation, who had entire control of its business, accepted in name of the corporation a draft drawn on himself personally. No objection being made for six months, the corporation is estopped to recover the amount from the bank. *McLaren v. Bank*, 76 Wis. 259; s. c., 45 N. W. Rep. 223. A receiver has no more right to recover than corporation had. *Id.*

Agent of an insurance company may, at time of making contract, waive by parol any clause in the policy. *Stanhilber v. Ins. Co.*, 76 Wis. 285; s. c., 45 N. W. Rep. 221.

Authority of agent of a corporation to make a contract may be shown by parol evidence. *Sell v. Logging Co.*, 88 Wis. 581; s. c., 60 N. W. Rep. 1065. And that president acted as agent of the corporation in making a contract. *Bank v. Lewis*, 78 Wis. 475; s. c., 47 N. W. Rep. 834.

Until after a corporation has legal existence, no one, whether a promoter or not, can be its agent; and if one assumes to act as such agent, the corporation is not bound thereby unless, with full knowledge of facts, it ratifies such contract. Upon a contract so made but not so ratified, the stockholders cannot be held personally liable under above section. *Bullington v. Bardon*, 80 Wis. 635; s. c., 50 N. W. Rep. 776.

An attorney of a corporation may be appointed for a longer term than one year. *Germania Spar & Bau Verein v. Flynn*, 66 N. W. Rep. 109.]

5. To make, amend and repeal by-laws and regulations not inconsistent with law, or its articles of organization for its own government, for the orderly conducting of its affairs, and the management of its property, for determining the manner of calling and conducting its meetings, the manner of appointing and mode of voting by proxy, and the tenure of office of its several officers, and such others as shall be necessary or convenient for the accomplishment of its purposes, and may prescribe suitable penalties for the violation of its by-laws, not exceeding in any one case twenty dollars for any one offense.

By-laws shall provide for number of officers and directors and manner of election. §§ 1748 (4), 1776.

6. To take and hold property, both real and personal, to an amount authorized by law and sell, convey, or otherwise dispose of the same.

Restrictions upon use of property. § 1767. Corporate rights may be purchased. § 1788. Limitation on holding of real estate. § 2200a. Execution of conveyances. § 2216, and: Acts of 1895, at page 36. See Const., art. I, § 13.

[A de facto corporation may hold and convey real estate. *Ricketson v. Galligan*, 89 Wis. 394; s. c., 62 N. W. Rep. 87.

Persons conspiring with promoters of a corporation to misrepresent the amount of property transferred to the corporation are equally liable with the promoters. *Park Co. v. Roberts*, 66 N. W. Rep. 399.]

Quorum; principal office; agent of foreign corporation — Stats., §§ 1744-1750a.

7. To mortgage its franchises, tolls, revenues and property, both real and personal, to secure the payment of its debts, or to borrow money for the purposes of the corporation, and no other, with the consent of a majority of its stockholders, or if not a stock corporation, of a majority of its members, and to establish, with the like consent, a sinking fund for the payment of its debts.

See subdivisions 1 and 6, *supra*. Not to engage in banking. § 2021.

§ 1749. A majority of the directors or trustees of every corporation, convened according to the by-laws thereof, shall constitute a quorum for the transaction of business. The members owning a majority of the stock in stock corporations, and a majority of the members of other corporations, shall constitute a quorum at any meeting of such stockholder or members, and be capable of transacting any business thereof, except when otherwise specially provided by law or by the articles of organization of the corporation.

Stock corporations to be managed by directors.
§ 1776. Meeting of stockholders, how called.
§ 1773.

[See *Wells v. Canal Co.*, 64 N. W. Rep. 69.]

§ 1750. Every corporation organized under the laws of this State, except such railroad corporations as own or operate railroads in another State, as well as in this State, in connection with their railroads in this State, shall have its principal office in this State, and shall keep in such office its general and principal books of account, including its stock books; and its principal managing officer or superintendent shall reside within this State. Any corporation which, according to the foregoing provision is not required to keep its principal office or books of account within this State, shall, whenever required to do so by the railroad commissioner, the legislature or any committee thereof, or of either house thereof, or any court of record, produce before such commissioner, legislature, committee or court, its said books of account and stock books; or so many and such parts thereof as may be necessary, and as may be required by such commissioner, legislature, committee or court, or in the discretion of such commissioner, legislature, committee or court, transcripts from such books or such parts thereof as may be required and called for, duly proved and authenticated, may be produced and used as and for the original; and each such corporation shall designate some office within this State as its principal office, and inform the railroad commissioner of such selection and designation, and such corporation shall keep in such office a list of its stockholders, together with a statement of the number of

shares of its stock held by each of them respectively, as shown by its books, which list shall be corrected as often as three times in each year, at the times of closing its stock books if it shall so often close them, and if it shall not so often close them, then such list shall be corrected once at least in each four months. A failure or refusal to comply with any of the foregoing provisions of this section shall be cause of forfeiture of its franchises. At least once in each year, each stock corporation shall make and file in its principal office, and keep on file there for the use of its stockholders, a statement and abstract of the assets and liabilities of such corporation, and of its financial transactions for the previous year, which statement shall be verified by the affidavit of the treasurer, or other proper officer of such corporation, and shall contain a brief statement of the sources whence its receipts have been received, stated in classes, and a similar statement of its expenditures, showing the amount disbursed for each class of objects and purposes.

See § 1772. Service of summons on corporation.
§ 2037.

[Independently of statute, it is the duty of a private corporation to keep its principal place of business, its records and residence of its officers, so located as to render it accessible to process and to exercise of visitatorial power of State by which it is created; and a forfeiture may be decreed for violation of this common-law principle. *State v. Ry. Co.*, 45 Wis. 580.]

§ 1750a. (Chapter 193, Laws 1880, amended by chapter 189, Laws 1881.) Every association, company or corporation, domestic or foreign, not duly organized and incorporated under the laws of this State formed for the purpose of transportation of passengers or property either by boat, vessel, rail, stages, or other means, doing or desiring to do any business in this State, before doing any such business, shall first deposit in the office of the secretary of State, a written instrument duly signed by the president and secretary thereof, and under their seal, if they shall have such officers and seal, otherwise by the principal officers thereof, and therein appoint an attorney to reside in this State, and have an office therein, specifying his place of residence and office, upon whom and where any summons, notice, pleading or process of any court, of this State or in any action therein, may be served, and shall therein stipulate that any service of any such summons, notice, pleading or process upon any such attorney, or in his absence at his said office, in any action brought against it in this State, upon any cause of action arising out of any business or transaction in this State, shall be accepted irrevocably as a valid service upon such association, company or corporation, unless another attorney shall be subsequently appointed with like authority in his stead; such authority shall be continued un-

revoked while any liability remains outstanding against said association, company or corporation in this State, and such an appointment shall not be revoked until another be made, and a like written instrument of appointment deposited and filed as aforesaid. The service aforesaid may be so made by any sheriff or proper officer of this State, or any person not a party to the action. No such association, company or corporation shall do any business within this State until they comply with the provisions of this act. Any violation of any of the provisions of this section shall for the first offense subject the company, corporation, association or any agent or agents, person or persons, acting for any company, corporation or association so violating to a penalty of five hundred dollars to be sued for and recovered in the name of the State with costs and expenses of such prosecution by the district attorney of any county in which the company, corporation, association, agent or agents, person or persons, shall be located or may transact or attempt to transact business without first complying with the requirements of this act, and such penalty when recovered shall be paid into the treasury of such county for the benefit of the school fund. Every subsequent violation shall subject the company, corporation, association, agent or agents, person or persons, guilty of such violation to the penalty of not less than one thousand dollars which shall be sued for, recovered and disposed of in like manner as for the first offense; Provided, however, That nothing herein contained shall be construed as repealing or in any manner affecting the provisions of chapter one hundred and twenty of the Revised Statutes of 1878, entitled, of "the manner of commencing civil actions."

Foreign manufacturing corporation to file statement. § 1770a. Foreign corporation may sue and be sued. §§ 3207, 3208. Service of summons on. § 2637. Attachment of property of. §§ 2731, 2736.

[An action cannot be maintained by a foreign insurance company upon a contract made with the company, unless it has complied with the provisions of the statute, by making the statement of its condition, as required, before entering into the contract. *Ins. Co. v. Harvey*, 11 Wis. 394.

The question whether a foreign corporation was such a one as might be licensed to do business in the State concerns only the State, and an action cannot be maintained by third parties merely to determine such question. *Foresters v. Commissioner of Insurance*, 73 N. W. Rep. 326.]

CAPITAL STOCK.

§ 1751. (As amended by chapter 414, Laws of 1891.) The capital stock of every corporation, divided into shares, shall be deemed personal property and when certificates thereof are issued, such shares may be transferred by indorsement of the owner, his

attorney or legal representative and delivery of the certificate. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for a value, together with a written transfer of the same, signed by the owner of the certificate, his attorney or legal representatives, shall be sufficient delivery to transfer the title as against all parties, but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred; and every person transferring any such certificates or shares of stock, shall remain liable to the creditors of the corporation to the extent and in the manner prescribed in section 1756.

Transfer on books, how compelled. § 1752. Stock issued for value only. § 1753. Calls. § 1754. Stockholder's liability. §§ 1755, 1756, 1769. Number of shares to be stated in articles. § 1772. Attachment of shares. § 2738. Sequestration of stock. § 3216. Fraudulent issue of stock; penalty. § 4436.

[No assignment of shares by indorsement and delivery of certificates (whether indorsement is in full or otherwise), is valid, except as between the parties, until it is entered on the books as required by above statutes; an attachment or execution creditor takes as against such transferee. In *re Murphy*, 51 Wis. 519; s. c., 8 N. W. Rep. 419.

In an action to set aside the assignment of stock, an averment that such assignment was made must be construed that it was made under above section so as to divest judgment debtor of all right to the stock, unless it was void for fraud or want of consideration. *Arzbacher v. Mayer*, 53 Wis. 380; s. c., 10 N. W. Rep. 440.

The liability created by section 1756 is additional to that under above section. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

Persons who deal in stock certificates do so with notice of the provision of above section and of section 1756. One who holds such certificate can only pledge his residuary interest in them. *Williamson v. State*, 74 Wis. 263; s. c., 42 N. W. Rep. 11.

Where defendants, by conspiracy and fraud, induced several persons to buy worthless shares of stock, it is not maintenance for such persons to contribute to a fund to prosecute an action by one of them as a test case to determine liability of defendants. *Davies v. Stowell*, 78 Wis. 324; s. c., 47 N. W. Rep. 370.

Representation that a mining company had \$1,500,000 worth of ore on the surface of the road for crushing is held not so extravagant as to justify court in holding, as a matter of law, that the purchaser of the stock of the company could not have relied upon it as being true. *Barndt v. Frederick*, 78 Wis. 1; s. c., 47 N. W. Rep. 6.

A purchaser becomes responsible for whatever remains unpaid upon the shares purchased, although directors had ordered certificates called in and canceled. *Herdegen v. Cotzhausen*, 70 Wis. 589; s. c., 36 N. W. Rep. 355.

A valid equitable pledge of corporate stock may be made by delivery of the certificates indorsed in blank by the owner as security for a debt, without entry of a transfer of the legal title upon books as provided in above section. *Plankinton v. Hildebrand*, 89 Wis. 209; s. c., 61 N. W. Rep. 839.

Transfer; issue of stock or bonds — §§ 1752, 1753.

Sale of controlling interest in a corporation; contract construed. *Ry. Co. v. Hoyt*, 89 Wis. 314.
 Contract for the sale of stock in a corporation, together with the seller's interest in its stock on hand, construed. *Novelty, etc., Co. v. Stone*, 66 N. W. Rep. 600.

One who is merely the holder of a corporation's capital stock in trust for creditors is not liable for the directors' mismanagement. *South Bend, etc., Co. v. Cribb Co.*, 72 N. W. Rep. 749.

One holding stock as collateral held not liable to corporate creditors whose claims accrued before he became a stockholder. *Gilman v. Gross*, 72 N. W. Rep. 885.]

§ 1752. Whenever it shall be made to appear to the circuit court, by affidavit or otherwise, that the secretary or other proper officer of any corporation has, upon proper demand, neglected or refused for two days to transfer on the stock book of the said corporation any stock which it is his duty to transfer; such court shall immediately issue an order requiring said secretary to show cause before said court, at some time named in said order, not more than ten days from the date thereof, why he should not transfer such stock, and shall in said order direct the manner of its service; and when said order is returnable, unless said secretary shows cause to the satisfaction of the court why such stock should not be transferred, said court shall order such transfer to be made by said secretary, at such time and place as to said court shall seem reasonable, and may enforce the performance thereof by proceedings for contempt.

See § 1751, cross-references.

[Fact that certificates of stock purporting to be fully paid were inadvertently issued when subscribers had paid but two-thirds of their subscriptions, and that the secretary has been ordered by directors to call in and cancel such certificates, does not justify him in refusing to transfer on books stock purchased from one of such subscribers. Nor is it material whether sale of the stock was bona fide or not. *Herdegen v. Coltzhausen*, 70 Wis. 589; s. c., 36 N. W. Rep. 385.]

Duties of secretary as to transfer of stock are purely ministerial, and he cannot inquire into the motives of the parties to the transfer. In re *Klaus*, 67 Wis. 401; s. c., 29 N. W. Rep. 582.

A by-law requiring consent of all stockholders to the transfer of the stock of a member is void as against public policy; and no exception can be made in the application of this rule on the ground that stockholders were originally copartners, and the one attempting to transfer his stock consented to and voted for such by-law. *Id.*

Laches in bringing action to compel transfer of corporate stock, what is. *Rodgers v. Van Northwick*, 87 Wis. 414; s. c., 58 N. W. Rep. 757.

Incorporator not guilty of laches in demanding delivery of certificate, when. *Wells v. Canal Co.*, 90 Wis. 442; s. c., 64 N. W. Rep. 69. In an action to compel a corporation to deliver stock, the directors are proper parties. *Id.*]

§ 1753. (As amended April 3, 1895.) No corporation shall issue any stock or certificates of stock except in consideration of money, or labor or property estimated at its true money value, actually received by it, equal to the par value thereof, nor any bonds or other evidence of indebtedness, except for

money, labor or property estimated at its true money value, actually received by it, equal to seventy-five per cent. of the par value thereof, and all stocks and bonds issued contrary to the provisions of this section, and all fictitious increase of the capital stock of any corporation, shall be void; Provided, however, That any corporation whose stock or bonds have been, or shall hereafter be, admitted to the Stock Exchange of Chicago, New York, Boston or Philadelphia, or of either of said cities, may sell such stock or bonds so admitted at the best price or prices current for the time being obtainable therefor on any of the said exchanges at which the same shall be offered for sale.

See § 1751, cross-references.

[A subscriber who agrees that stock shall be issued to him at less than its par value, though his act is not expressly prohibited, is in pari delicto, and he cannot maintain the contract or recover back money paid on it. *Clarke v. Lumber Co.*, 59 Wis. 655; s. c., 18 N. W. Rep. 492. See, also, *Mining Co. v. Spooner*, 74 Wis. 307; s. c., 42 N. W. Rep. 259.]

A court of equity has jurisdiction of an action brought by a stockholder against a corporation to procure the cancellation of stocks alleged to have been issued without lawful authority, and incidentally to restrain holders of such stock from voting thereon. *Wood v. Building Assn.*, 63 Wis. 9; s. c., 22 N. W. Rep. 756.

Where complaint, though in form in behalf of plaintiff alone, shows that other stockholders will be injured in same manner by the unlawful issue, that it was issued contrary to their wishes, and demands relief which would necessarily inure to benefit of all stockholders, the action is in behalf of all, and any stockholder may become a party plaintiff. *Id.* The directors are not necessary parties. *Id.*

Inventions for which patents have been applied for, and the prospective patents, are "property," within meaning of this section, in consideration of which stock may be issued. *Whitehill v. Jacobs*, 75 Wis. 474; s. c., 44 N. W. Rep. 630.

Where fully-paid stock is issued for property received by corporation, the holders thereof cannot be charged with a debt of the corporation on ground that such stock was not in fact fully paid, unless there was actual fraud in the transaction and the credit was given to the corporation in the belief that its stock was fully paid. *Id.*

Fraudulent representations as to value and validity of stocks issued in consideration of labor and property; effect of. *Warner v. Bates*, 75 Wis. 278; s. c., 43 N. W. Rep. 957.

A court of equity may, in a suit by a stockholder, adjudge that stock issued by a corporation is void on ground of fraud. *Bailey v. M. & P. Co.*, 77 Wis. 453; s. c., 40 N. W. Rep. 539.

Where bonds of a corporation, pledged as security for its debt, were void under above section, because issued without its receiving 75 per cent. of their value, no action for surrender or cancellation thereof can be maintained by the corporation, or by a stockholder in its right, without a tender of the amount due to the pledgee. *Hinckley v. Pfister*, 83 Wis. 64; s. c., 53 N. W. Rep. 21.

Where all the stock of a corporation is void under this section because not fully paid for, none of the stockholders can make any claim by himself or through it to the aid or protection of a court of equity as against the others, based upon the rights of the stockholders. *Id.*

Where a corporation hypothecates its bonds as security for loan, it issues them within meaning of above section, and if it is not stipulated that they shall be accounted for at less than 75 per cent. of their par value, the bonds show issue to be void. *Pfister v. Elec. R. Co.*, 83 Wis. 86; s. c., 53 N. W. Rep. 27.

Subscriptions; decrease of capital, liability of stockholders — Stats., §§ 1754-1757.

As between corporation and its stockholders, it cannot be claimed that the property conveyed was an insufficient consideration for the stock. *Wells v. Canal Co.*, 64 N. W. Rep. 69.

False representations to induce subscription to stock; subject dismissed. *Warner v. Benjamin*, 89 Wis. 290; s. c., 62 N. W. Rep. 179.

A contract of subscription held to be several with each subscriber, and not joint. *B. & M. Co. v. Cupp*, 89 Wis. 673; s. c., 62 N. W. Rep. 520.

A subscription to stock is not binding until delivered to and accepted by the corporation. *Gilman v. Gross*, 72 N. W. Rep. 885.

That promoter paid commission to induce another to subscribe held not a fraud on the corporation or other subscribers. *Cold Storage Co. v. Dexter*, 74 N. W. Rep. 976.]

§ 1754. Unless otherwise expressly provided by law, or the articles of organization, the directors of any corporation may call in the subscriptions to the capital stock, by installments, in such proportion and at such times as they shall think proper, by giving such notice thereof as the by-laws shall prescribe, and may enforce payment thereof, by suit in the name of the corporation; or in case any stockholder shall neglect or refuse payment of any such installment, for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, the stock of such negligent stockholder may be sold by the directors at public auction, giving at least thirty days' notice in some newspaper published at or nearest to the place where the business of such corporation is transacted; and the proceeds of such sale shall be first applied in payment of the installment called for and the expenses attending the sale, and the residue be refunded to the owner thereof; but if the proceeds of such sale shall not be sufficient to pay such installment and the expenses of the sale, such delinquent stockholder shall remain liable to the corporation for such deficiency; such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

See § 1751, cross-references.

[Where an insolvent corporation ceases to do business and assigns all its property, including unpaid subscriptions to stock, to trustees for benefit of creditors, the liability of its stockholders at once becomes absolute, and Statute of Limitations begins to run in their favor, and against such creditors and trustees. *Glenn v. Dorschner*, 23 Fed. Rep. 695. But see *Glenn v. Howard*, 8 S. E. Rep. 636.

An assessment held to be unequal and, therefore, void, though made by a court of another State in an action therein. *Tel. Co. v. Burnham*, 79 Wis. 47; s. c., 47 N. W. Rep. 373; *Bowen v. Kuehn*, 79 Wis. 53; s. c., 47 N. W. Rep. 374.

In an action upon a subscription to stock, evidence held not to sustain defendant's claim and that he had induced another person to take a part of the stock, and that the corporation had thereby released him from further liability. *McLaren v. Terry*, 81 Wis. 118; s. c., 51 N. W. Rep. 87.

Under the statute, notice of a call on stockholders for an installment on stock must be prescribed by a by-law, or equivalent resolution, uniform as to all stockholders. *Germania I. M. Co. v. Kling*, 69 N. W. Rep. 181.

Right of corporation to recover on a subscription for stock after a sale by it of its entire stock. *Level Land Co., etc. v. Hayward*, 69 N. W. Rep. 567.

A subscriber to stock is not a stockholder until the subscription is accepted by the corporation. *Badger Paper Co. v. Rose*, 70 N. W. Rep. 302.]

§ 1755. Whenever the capital stock of any corporation shall be diminished by any corporate vote, the stockholders thereof shall be liable for the payment of all debts then remaining unpaid, in an action by any such creditor or lawfully appointed receiver or assignee of such corporation, to an amount equal to the sum respectively refunded to them, or credited upon their debts for unpaid stock, or both. And also the stockholders voting for such diminution shall be jointly and severally liable to any creditor whose debt shall then remain unpaid, to an amount equal to the whole amount refunded to the stockholders, or credited upon their debts for unpaid stock, or both; but all stockholders shall be liable for contribution to every stockholder compelled to discharge corporate debts under this section proportionately to the amount so refunded or credited to them respectively.

See next section, and § 1751, cross-references. Stockholder's liability. § 1769. How enforced. § 3226. Statute of Limitations. § 4252.

[The liability imposed by section 1769 is additional to that created by above section and by section 1751. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

Purchaser of stock not fully paid up becomes liable for unpaid balance due thereon. Such stock may be sold and assigned like any chose in action. *Herdegen v. Cotzhausen*, 70 Wis. 589; s. c., 36 N. W. Rep. 385.]

§ 1756. If any stock shall be transferred, which is not fully paid, the corporation may, by agreement, to be noted on its stock book, discharge the stockholder making such transfer, from liability to it for the unpaid part of his stock subscription, and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the amount unpaid thereon to the then creditors of such corporation, and those who may become such within six months after such transfer, or to any lawfully appointed receiver or assignee of the corporation for their use.

See § 1755 and § 1751, cross-references.

§ 1757. The books of every corporation containing the stock subscriptions and accounts shall at all reasonable times be open to the inspection of the stockholders; and every creditor of a corporation shall be informed at any time of the amount of capital stock of such corporation subscribed, the amount paid in, who the stockholders

are, the number of shares of stock owned by each, and the amount unpaid by each stockholder upon the shares owned by him, and if any shares of stock, which were not fully paid for, have been transferred within six months of the time of inquiry, the name of the person who transferred the same and the amount due thereon at the date of such transfer. And the officers of such corporation shall furnish any such creditor correct information thereof. And any officer refusing, when requested so to do, shall be liable for any damage caused thereby.

See § 1751, cross-references.

[The "accounts" which are required by above section to be open to inspection of stockholders include not only stock accounts, but also the general accounts of the corporation. *State v. Bergenthal*, 72 Wis. 314; s. c., 39 N. W. Rep. 566. Writ of mandamus to permit stockholder to examine books is properly directed to person having possession and control of them. *Id.* Whether corporation itself should be made a party to the proceeding is not a question to be considered on a motion to quash the writ, but facts in that behalf should be made to appear by the return. *Id.*]

§ 1758. In actions by or for the benefit of any such creditor against stockholders to recover what may be due and unpaid on any stock, such stockholders shall only be credited with such sums as have been actually paid in, in money, or its equivalent in value on account of such stock, and not with any dividend which may have been declared and applied on such stock.

Corporation may be joined as defendant. § 3223.
Payments, when stockholders to make. § 3226.
Suits restrained. § 3227.

§ 1759. Every corporation shall keep a correct and complete record of all its proceedings, including such as relate to the election of its officers; and such record may be kept in any other than the English language, when so provided in its articles of organization. Every corporation shall also keep a book containing the names of all stockholders or members, since its organization, showing the place of residence, amount of stock held, time of acquiring stock or becoming a member, time of transfer of stock or cessation of membership, of each respectively. If any officer, agent or servant of any corporation, shall omit to make any entry in the books or records thereof, which it is his duty to make as such officer, agent or servant, he shall forfeit not less than twenty-five nor more than one thousand dollars, and be liable for all damages thereby sustained.

Stockholder may inspect books. § 1757. Election of officers. § 1762. Books to be produced. § 1750. Records of stockholders. § 1751. Examination by attorney-general. § 1766.

MEETINGS OF STOCKHOLDERS.

§ 1760. Every stockholder of any corporation shall be entitled to one vote for each share of stock held and owned by him, at every meeting of the stockholders and at every election of the officers thereof, and may vote either in person or by proxy at such elections, and by proxy at other meetings when so provided by the by-laws of the corporation; and every executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the stockholders, and may vote thereat as a stockholder.

Meeting, how called. § 1773. Quorum, what is. § 1749. Meetings not regularly called. § 1761. Election of officers, how called. § 1762.

§ 1761. When all the members of any corporation shall be present at any meeting, however notified, and shall sign a written consent to the holding of such meeting on the records thereof, they may transact any business at such meeting, which could lawfully be transacted at any meeting of the members of such corporation, regularly called and notified.

See § 1760, cross-references.

§ 1762. When not otherwise specially provided by law or by the by-laws of any corporation, the directors or trustees thereof shall call and order the elections of the officers of such corporation annually; and if they refuse so to do, or if from any other cause it shall happen that an election of directors or trustees shall not take place at the annual meeting, such corporation shall not be deemed dissolved thereby, but the former officers shall continue to act as such until their successors shall have been elected and qualified, and a special election may be called by the proper officers of such corporation for electing such officers by giving such notice as is required for the annual election; but if such officers shall refuse or neglect to call such special election, for ten days after the time fixed for the annual election, or if there be no officer authorized to call such special election, then any two or more members of such corporation may call a special meeting for the election of officers in the manner prescribed in section one thousand seven hundred and seventy-three. When the day fixed for the annual election of officers or other meeting of a corporation shall fall on Sunday or on a legal holiday, such election or meeting shall be held on the next succeeding secular day.

See § 1748 (4), cross-references.

§ 1763. Whenever any corporation shall have remained insolvent, or shall have neglected or refused to pay and discharge its

notes or other evidences of debt, or shall have suspended its ordinary and lawful business for one whole year, it shall be deemed to have surrendered the rights, privileges and franchises granted or acquired under any law, and shall be adjudged to be dissolved.

Corporation may dissolve, how. § 1789. Receiver may be appointed. § 2787. Insolvent corporation may be enjoined. § 3218. Action to vacate charter. §§ 3240-3250.

[The origin, purposes and scope of above section discussed. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335; *Strong v. McCagg*, 55 Wis. 624; s. c., 13 N. W. Rep. 895.

Surrender of franchises, what held to be. *Combes v. Keyes*, 89 Wis. 297; s. c., 62 N. W. Rep. 89.

Secretary of a defunct corporation may testify as to facts which worked its dissolution. *Id.*

No costs can be awarded in favor of a defunct corporation. *Id.*

The insolvency of a corporation does not convert its property into a trust fund. *Ford v. Hill*, 66 N. W. Rep. 115.

The suspension by a corporation of its ordinary business for the year does not ipso facto dissolve the corporation under above section. *Mylrea v. Superior, etc., Ry. Co.*, 67 N. W. Rep. 1138.

A corporation is not dissolved by a mere non-user of its franchises. *Id.*]

§ 1764. All corporations whose term of existence shall expire by their own limitation, or which shall be voluntarily dissolved in the manner provided by law, or by its articles of association, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate for three years thereafter, for the purpose of prosecuting and defending actions, and of enabling them to settle and close up their business, dispose of and convey their property and divide their capital stock, and for no other purpose; and when any corporation shall become so dissolved, the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known, shall, subject to the power of any court of competent jurisdiction to make, in any case, a different provision, continue to act as such during said term, and shall be deemed the legal administrators of such corporation, with full power to settle its affairs, sell or dispose of and convey all its property, both real and personal, collect the outstanding debts, and after paying the debts due and owing by such corporation at the time of its dissolution, and the costs of such administration, divide the residue of the money and other property among the stockholders or members thereof.

[Above section does not limit the time within which an action must be brought to enforce liability imposed upon stockholders by section 1769. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

It prolongs existence of a corporation for three years for what purpose? *Powers v. Paper Co.*, 60 Wis. 23; s. c., 18 N. W. Rep. 20.]

§ 1765. (As amended by chapter 59, Laws of 1893.) No dividends shall be paid out to the stockholders of any corporation until the capital stock has been fully paid in. And no dividend shall thereafter be declared or paid by the directors of any corporation, except out of net profits properly applicable thereto, and which shall not in any way impair or diminish the capital; and if any such shall be paid, every stockholder receiving the same shall be liable to restore the full amount thereof, unless the capital be subsequently made good; and if the directors of any corporation shall pay any such dividend before the capital stock is fully paid in, or shall pay any such dividend when the corporation is insolvent, or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividend to the amount of their debts; Provided, That any corporation which has invested or hereafter may invest its net earnings or income, or any part thereof, in permanent additions to its property, or whose property shall have increased in value, may lawfully declare a dividend upon its capital, payable to stockholders, either in money or in stock, to the extent of the net earnings or income so invested, or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the company in excess of its total liabilities, including its capital stock.

§ 1766. The attorney-general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this State, and report such examination in writing, together with a detailed statement of the facts to the governor, who shall lay the same before the legislature, and for that purpose the said attorney-general shall have power to administer all necessary oaths, and to examine any person in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any corporation in this State at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, may examine any person in relation to the affairs and condition of such corporation, and its vaults, safes, books, papers and documents, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe.

Action to annul charter. §§ 3240-3250.

Restriction of powers; stockholders liable for wages — Stats., §§ 1767-1770a.

[Application by attorney-general for leave to bring proceedings to forfeit the franchise of the corporation denied on the ground that the right to bring such proceedings had been waived. *State v. Water Power Co.*, 66 N. W. Rep. 512.]

§ 1767. The property of any corporation organized under any special or general law, shall be used only for the purposes prescribed by such law, or by its articles of organization in pursuance thereof.

General powers. § 1748.

§ 1768. The legislature may at any time limit or restrict the powers of any corporation organized under any law, and for just cause annul the same and prescribe such mode as may be necessary for the settlement of its affairs.

All charters may be altered or repealed. Const., art. XI, § 1. Proceedings to annul charter. §§ 3240-3250.

§ 1769. The stockholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the stock owned by them respectively in such corporation, for all debts which may be due and owing to its clerks, servants and laborers for services performed for such corporation, but not exceeding six months' service in any one case. * * *

Stockholder's liability. § 1755. How released. § 1756. How enforced. § 3226. Limitation of action upon. § 1769.

[The mere dissolution of a corporation by its own voluntary act or by its ceasing to act as a corporation does not relieve stockholders from liability under above section. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

A judgment against a corporation is not a condition precedent to the action under this section. *Id.* Liability created is in addition to liability of stockholders under sections 1751, 1756. *Id.*

In an action under section 1769 against stockholders of a corporation which has assigned all its property for benefit of its creditors, it may be shown that the corporation has no property or effects in hands of assignee, and, that fact appearing, court may proceed to ascertain the respective liability of stockholders to enforce same without appointing a receiver or other proceedings to ascertain whether any dividends to creditors would be made by the assignee. *Id.*

A partial payment of amount due to a servant for wages, if no particular application thereof is made by either party, will be held to apply in payment of wages first earned. *Id.*

Superintendents and foremen of manufacturing corporations, though they do not perform manual labor, are servants within meaning of this section. *Id.*

If stock is held by person in his own name, and it so appears on books, he is liable under above section, even though he holds it as collateral security. *Id.*

Limitation of actions under above section. *Id.* Legislature may fix liabilities of all stockholders of an existing corporation as to all debts contracted after enactment of the law fixing such liability. *Id.*

It is not stockholders at time a debt accrued, but those at time action is commenced thereon, who are individually responsible. *Cleveland v. Burnham*, 55 Wis. 598; s. c., 13 N. W. Rep. 677, 680.

Liability under this section is not that of a partner, nor surety or guarantor, but one arising from the analogies of the law of corporations. *Id.* But see *Coleman v. White*, supra.

As to the form of action, see *Adler v. Brick Co.*, 13 Wis. 57; *Pierce v. Const. Co.*, 38 id. 253; *Balston v. Bank*, 18 id. 490; *Powers v. Paper Co.*, 60 id. 23; s. c., 18 N. W. Rep. 20.

Right of an employee to enforce his claim for services against stockholders personally, under above section, survives to his personal representative, and is, therefore, assignable. *Day v. Vinson*, 78 Wis. 198; s. c., 47 N. W. Rep. 269.

Subscribers to capital stock to whom their stock has been issued upon payment of less than the par value thereof, may be compelled to make further payment thereon up to such par value, for benefit of corporate creditors. *Invest. Co. v. Mining Co.*, 78 Wis. 427; s. c., 47 N. W. Rep. 726.

In an action under above section, against stockholders personally for debts due for services performed for the corporation, brought by some of the servants of corporation, or their assignees, in behalf of all creditors of the corporation having similar claims, defendants are not prejudiced by an order adding as plaintiffs further servants, or their assignees, for similar claims. *Day v. Buckingham*, 87 Wis. 215; s. c., 58 N. W. Rep. 254.

A judgment creditor of a corporation (whether or not he has docketed his judgment, and issued execution against the real estate of the corporation) may maintain an action in behalf of himself and all other creditors who choose to be parties thereto, against the corporation jointly with the stockholders to reach and appropriate its assets, and enforce the liability of stockholders. *Bank v. Chandler*, 19 Wis. 434.

A stockholder held liable for debts due laborers, under above section, though the services were performed outside the State. *Clokus v. Hollister Mining Co.*, 66 N. W. Rep. 398.]

§ 1770. Every corporation may maintain an action against any of its members or stockholders for any cause relating to the business of the corporation, the same as against any other person; and like actions may be maintained by any member or stockholder against such corporation for any cause of action in his favor against the same.

Corporation may sue and be sued. § 1748 (1), cross-references.

§ 1770a. (Chapter 229, Laws of 1883.) 1. Every foreign corporation actually engaged in manufacturing within the State, shall, upon the written request of any resident creditor thereof, within sixty days from the time of making such request, and annually thereafter upon a like request, file in the office of the secretary of State of this State, a statement showing the capital stock subscribed; the amount thereof actually paid in, the full name of each of its stockholders, and the amount of stock held by each; and shall at the time of so filing the first of said statements, also file in such office a certified copy of its articles of organization or association. Such written request may be served by mail upon the president, secretary or other principal officer of said corporation, or personally upon any officer or agent of such corporation, who may be within this State.

2. If any such corporation shall fail to file with the secretary, said report, within said

sixty days, it shall forfeit all right to further carry on or transact any business in this State, and it shall be unlawful for said company, or any person for it, to do or transact any business within this State, and on such failure to comply with the terms of this act, any person or agent who shall assume to act for or transact any business for or on account of said corporation, shall be liable to a penalty for each and every offense, for not less than twenty-five dollars nor more than one hundred dollars, and the same may be sued for in the name of the State, by the district attorney of the county where such offense has been committed, in any court having jurisdiction thereof, and the proceeds thereof, after deducting taxable costs, shall be paid into the school fund of the State.

Foreign corporation to appoint attorney for process. § 1750a.

CHAPTER LXXXVI.

Organization.

- Sec. 1771. Provisions for organization of corporations; when executors or trustees may organize.
1772. Articles of Incorporation, what to contain. Fees.
1773. Temporary direction of affairs. Meeting of stockholders, how called.
1774. Articles, how amended. Amendments to be recorded. Change of corporate name.
1775. General powers; may purchase stock in other corporation, when.
- 1775a. May acquire rights, franchises, etc., granted to other persons.
1776. Stock corporations to be managed by directors.
1788. Purchasers of corporate rights may reorganize.
1789. Corporations may dissolve, how.
1790. Amendment of charter or articles.
1791. Powers of corporations hitherto formed. Defects cured.

§ 1771. (As amended by chapter 220, Laws of 1883, chapters 180 and 352, Laws of 1887, chapters 274 and 403, Laws of 1891.) Three or more adult persons, residents of this State, may form a corporation in the manner provided in this chapter to conduct or pursue or promote any one or more of the following named purposes: For any lawful mercantile, trading, mining, smelting, quarrying, producing, lumbering, manufacturing, agricultural, mechanical, chemical, transportation, shipping, forwarding, commission or storage business, for building, constructing, maintaining and operating private steam logging railroads for use of carrying on and conducting a logging and lumbering business, and to be used and operated for the private purpose and exclusive use of such corporation in such business, and for transporting and conveying its logs, timber, lumber and other materials, supplies and employees, and for no other use or purpose whatsoever; also to acquire any such railroad heretofore constructed, and to maintain, use and operate the same for such purposes; for loaning

money on securities or otherwise; or buying, selling, exchanging and dealing in all kinds of property, real or personal, or both, for building, selling or renting buildings of any kind or for any purpose; constructing, leasing or operating docks, warehouses, elevators or hotels; for improvement of rivers and streams, and for driving, sorting and delivering logs or timber; for building and operating telegraph lines or conducting the business of telegraphing in any way; for encouraging or aiding inventors or patentees; or for the purpose of forming a board of trade, for cultivating or advancing science, literature or art or any branch thereof; for the establishment, maintenance and use of schools, high schools, academies, seminaries, colleges, universities, lyceums, libraries, art galleries and the like; for the cultivation and practice of music; for the development of the bodily powers by gymnastic and other exercises, or by practice and competition in sharp-shooting, or any lawful games or sports; for the practice or improvement or the promotion of general interest in any lawful games or mode of amusement; for practice in and promotion of debating, declamation or public speaking, for establishing, maintaining and managing driving parks; for the establishment and maintenance of any industrial school, for the keeping and reformation of children lawfully committed to the same; for the establishment and maintenance of any benevolent, charitable or medical institution, hospital or asylum; for the mutual support of the members, their families or kindred in case of sickness, misfortune, poverty or death; or for contributing to the burial of the dead; and also for the purpose of locating, building, encouraging and establishing manufactories and manufacturing establishments in cities and towns within this State; or for any lawful business or purpose whatever, except the business of banking, insurance, building or operating public railroads, or plank or turnpike roads, or other cases otherwise specially provided for.* Any such corporation may be formed to have a capital stock divisible into shares, or without any capital stock upon such plan as may be agreed upon. The executors or trustees under any will, or one or more of such executors or trustees, who are authorized, requested or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this section, or the general laws of this State, may, individually or as executors, or together with the legatees mentioned in the will, one or more of such executors, trustees or legatees, may sign, execute, verify and acknowledge articles of incorporation or association under the provisions of chapter

*Sections 1862 and 1863 of chapter 87, R. S., 1878, as amended by chapter 221, Laws of 1880, and 219, Laws of 1881, provide that corporations for constructing, maintaining and operating street railways may be organized under this section.

85 of the Revised Statutes, for the purpose of carrying out the intentions of the testator as expressed in his will, and for the purpose of forming and organizing such corporation, and in such case may transfer and convey to such corporation any property of the testator mentioned and referred to in such will and authorized or required to be used for such purpose, and said executors, trustees or legatees, or two or more of them may subscribe to the capital stock of such corporation to the amount of the value of the property mentioned and referred to in such will, and such executors or trustees may convey the property mentioned or referred to, to such corporation in payment of the stock so issued and subscribed without application to or authority from any court. And also for the purpose of insuring or guaranteeing owners of real estate and owners of real estate mortgages and others interested in real estate from loss by reason of defective titles, liens and incumbrances, but no such corporation shall be authorized to transact any business or exercise any powers as such, with a capital stock of less than two hundred thousand dollars, the whole of which shall have been duly subscribed, and one-quarter thereof shall have been actually paid in, in money, and invested as hereinafter provided; said one-quarter of the amount of stock so paid in shall be invested in bonds of the United States or of the State of Wisconsin, or in the bonds and obligations of any incorporated city of this State, containing a population of not less than ten thousand souls, which bonds shall not have been issued as a bonus for, or purchase of, or subscription to, any railroad or other private enterprise, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation of the real and personal property of said city; or in the bonds of any organized county in this State containing a population of not less than ten thousand souls, which bonds shall not have been issued for any of the purposes aforesaid, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation of the real and personal property of such county; or in bonds or promissory notes secured by first mortgages or deeds of trust upon unincumbered real estate situated within this State, worth at least thirty per centum more than the amount of the obligation so secured. Such corporation may make and deliver and in like manner accept and receive all necessary and proper deeds, conveyances, mortgages, leases, assignments and other contracts and writings obligatory, and have and exercise all necessary rights, franchises, muniments, estate, powers, and privileges necessary to that end; and such corporation is authorized to loan money and funds and secure such loans by mortgage or trust deed, and shall have power to purchase real estate, notes,

bonds, mortgages, trust deeds, and other evidences of indebtedness, and to sell, convey and assign such real estate, notes, bonds, mortgages, trust deeds and other evidences of indebtedness and other securities, and to convert them into cash or other securities. Whenever any such corporation shall have so invested one-quarter of its capital stock required to be paid in, as herein provided, the secretary or president of such corporation shall file with the secretary of State a statement under oath containing a description of the securities purchased under the provisions of this act, and such corporation shall, at the same time, file with the secretary of State its bond, with sureties to be approved by him, in the penal sum of one-half of its capital stock, to the State of Wisconsin, conditioned that it will pay all liabilities of such corporation and will deliver to the secretary of State and his successors in office, on demand, any part or all of said securities, when he shall in his judgment require the same for the security of the insured, and the creditors of such corporation or for the purpose of examination, and upon default of any of the conditions of such bond the secretary of State is hereby authorized to commence suit thereon for the benefit of any or all of the creditors of such corporation. Upon the filing of such statement and bond, the secretary of State shall execute and deliver a certificate, authorizing the said corporation to commence, carry on and transact business under the provisions of this act. And such corporation may also deposit such securities with the secretary of State, and when it shall so deposit them it shall have the privilege of withdrawing them and of replacing them as the necessities of its business may require. And when such securities are so deposited with the secretary of State, he shall authorize, in writing, such corporation to collect the interest, dividend and income of the same. The secretary or president of any such corporation, after the filing of its first statement of securities, shall annually thereafter on the second Tuesday of January, file a like statement under oath with the secretary of State. And if at any time the secretary of State shall not be satisfied with such statement he may require the production of such securities before him for examination, if they have not already been deposited with him. In lieu of filing such statements and filing such bond, such corporation shall deposit such securities with the secretary of State, and he shall thereupon issue the certificate hereinbefore provided for, authorizing such corporation to transact business, and he shall further authorize such corporation to collect the interest, income and dividends of such securities. Such corporations are hereby declared not to be insurance companies within the meaning of chapter 89 of the Revised Statutes, and the several acts amendatory thereof, except in the provisions relating to

Articles of incorporation; fees — Stats., § 1772.

taxation; and such corporations shall pay a license fee, the same as fire insurance companies, in the manner provided by law, in lieu of all taxes.

Corporations must be organized under general laws. Const., art. IV, §§ 31, 32; art. XI, § 1. Powers of corporations. §§ 1748, 1775, 1791.

[Charter of a corporation organized under general law must be amended by general law only. *Boom Co. v. Reilly*, 44 Wis. 295.

This chapter does not in any way affect rights and authority of corporations organized under a special charter prior to its enactment. *Dann Assn. v. Ketchum*, 54 Wis. 313; s. c., 11 N. W. Rep. 351.

Telephone companies, though not specifically mentioned, may incorporate under above section with powers like those given to telegraph companies by section 1778. *Tel. Co. v. Oshkosh*, 62 Wis. 32; s. c., 21 N. W. Rep. 828.

A corporation whose primary object is without statutory authority can have no legal existence, even though among declared purposes are some for the promotion of which the law permits corporations to be formed. *State v. Inv. Co.*, 88 Wis. 512; s. c., 60 N. W. Rep. 796.

The words "or for any lawful business or purpose whatever, except," etc., are general and extend only to things of nature kindred to those specifically mentioned. *State v. Inv. Co.*, 88 Wis. 512; s. c., 60 N. W. Rep. 796.

Whether or not a mere resident of the State can, under above section, maintain action, *quaere*. *Id.*

§ 1772. (As amended by chapter 7, Laws of 1879, chapter 143, Laws of 1881, chapter 241, Laws of 1883, chapters 256 and 353, Laws of 1885.) In order to form such a corporation the persons desiring so to do, shall make, sign, and acknowledge written articles containing:

1. A declaration that they associate for the purpose of forming a corporation under these Revised Statutes, and of the business or purposes thereof.

2. The name and location of such corporation; but such name shall not contain the names of individuals in the manner in which they are ordinarily used in partnership or business names. No corporate name shall be held illegal because of the omission of the word "limited."

3. The capital stock, if any, the number of shares and the amount of each share.

4. The designation of general officers and of the number of directors, which shall not be less than three, and the directors may be required to be classified into three classes, so that one-third shall hold their offices for one year, one-third for two years, and one-third for three years; in which case all directors elected subsequent to the first shall hold their offices for three years, except when elected or appointed to fill vacancies.

5. The principal duties of the several general officers respectively.

6. The method and conditions upon which members shall be accepted, discharged or expelled; and in stock corporations persons holding stock according to the regulations of the corporation, and they only shall be members.

7. (As amended April 13, 1895.) Such other provisions or articles, if any, not inconsistent with law, as they may deem proper to be therein inserted for the interests of such corporations, or the accomplishment of the purposes thereof, including, if desired, the duration of its existence. In case the corporation is formed without capital stock, the articles shall fix the time and place for the first meeting for the election of officers, and the signers of such articles shall give notice thereof to the members in the manner provided in the next section. Such original articles, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be recorded by the register of deeds of the county in which such corporation is located; and no corporation shall, until such articles be so left for record, have legal existence. A like verified copy shall, within thirty days, be filed with the secretary of State, and for a failure so to do, each signer of any such articles shall forfeit twenty-five dollars. For filing every such articles of incorporation with the secretary of State and issuing a certificate of incorporation, the incorporators shall pay the sum of twenty-five dollars; Provided, That any corporation which shall be organized with a capital stock of twenty-five thousand dollars or less shall pay a fee of ten dollars for the filing of said incorporation papers, and for filing with the secretary of State an amendment to articles already filed, they shall pay the sum of five dollars, and no articles of any such amendments shall be filed unless such fees be first paid, and such sums shall be paid into the State treasury by the secretary of State; Provided, No fee or payment of any sum for filing articles of association, or of any amendments thereto, shall be required from any corporation organized exclusively for benevolent, charitable or reformatory purposes, whose articles of incorporation shall provide that no dividends or pecuniary profits shall ever be made or declared by such corporation to its members.

Register of deeds must keep book of record. § 763. Articles, how amended. §§ 1774, 1790. Principal office must be in the State. § 1750. Defect in articles, how cured. § 1791. Articles as evidence. § 4181. Existence of corporation presumed. § 4199.

[The articles need not designate with particularly all powers, but may designate in general terms purposes for which the corporation is organized, and when organized, such corporation may exercise all such powers as are usual and necessary to accomplish its purpose, not in conflict with the law of the State. *Wendell v. State*, 62 Wis. 300; s. c., 22 N. W. Rep. 435.

Above section and section 1774 must be construed together. *Wood v. Gospel Assn.*, 63 Wis. 9.

Provision of first clause of subdivision 6 has no application to the articles of a stock corporation, and their omission therefrom will not affect the legality of its incorporation. *Mfg. Co. v. Croft*, 69 Wis. 256; s. c., 34 N. W. Rep. 143.

Provision that articles shall state "name and location" of the corporation does not authorize

them to fix the place where its principal office shall be. *Steamship Co. v. Milwaukee*, 83 Wis. 590; s. c., 53 N. W. Rep. 839.

Right of private person to a suit to enjoin a corporation from carrying on business, on the ground that its incorporation is illegal, determined. *Supreme Court of I. O. F. of Canada v. Supreme Court of U. O. of Foresters*, 68 N. W. Rep. 1011.]

§ 1773. Until the directors or trustees shall be elected, the signers of the articles of organization shall have direction of the affairs of the corporation, and make such rules as may be necessary for perfecting its organization, accepting members or regulating the subscription to the capital stock. In stock corporations the first meeting may be held at any time after one-half of the capital stock shall have been subscribed; and may be called by any two signers of the articles, at such time and place as they shall appoint by giving ten days' personal notice thereof, in writing, to each subscriber of stock, or by publishing notice thereof for at least two weeks before such meeting in some newspaper published at or nearest to the designated place of location of the corporation, or such meeting may be held without previous notice, if all the subscribers for stock be present in person or by duly authorized attorney. No such corporation shall transact business with any others than its members, until at least one-half of its capital shall have been duly subscribed, and at least twenty per centum thereof actually paid in; and if any obligation shall be contracted in violation hereof, the corporation offending shall have no right of action thereon; but the stockholders then existing of such corporation shall be personally liable upon the same.

Consent to meetings not regularly called. § 1761. Record of proceedings, how kept. § 1759. Quorum of stockholders. § 1749.

[Where board of directors, in issuing new stock to shareholders generally, refuse to issue to particular stockholder his proportion thereof, he may compel its issue to him by suit in equity against the corporation, though he might have maintained an action at law against it for damages. *Dousman v. M. & S. Co.*, 40 Wis. 418.

No call or assessment, subsequent to the preliminary one, upon such subscription to stock of a corporation can be made unless, in compliance with above section, at least one-half of the stock has been subscribed, and at least 20 per cent. thereof actually paid in. And this is so even though subscriber agreed to pay the balance of such shares at such times and in such installments as the same shall be called for by said corporation. *Mining Co. v. Sherman*, 74 Wis. 226; s. c., 42 N. W. Rep. 226.

In an action to recover a call or assessment the complaint must aver compliance with above section. *Id.*

In an action to enforce a personal liability upon such a contract under above section, it is not competent for plaintiff to prove that agent acted for the stockholders individually or that they ratified the contract. *Buffington v. Bardon*, 80 Wis. 635; s. c., 50 N. W. Rep. 776.

Under sections 1772, 1773, a corporation becomes such when its articles are filed for record. *Badger Paper Co. v. Rose*, 70 N. W. Rep. 302.

After articles are filed for record, but before organization, the signers of the articles may contract for materials to carry on the business. *Id.*

§ 1774. Any corporation organized under this chapter may, at any meeting of its members, by a vote of at least the owners of two-thirds of all the stock then outstanding, in case of stock corporations, or at least one-half of the members of corporations without stock, unless a greater vote shall be required in its articles, amend its articles of organization so as to modify or enlarge its business or purposes, change its name or location, increase or diminish its capital stock, change its officers or the number of directors, or provide anything which might have been originally provided in such articles; but no corporation without stock shall change substantially the original purposes of its organization. Such amendment shall be adopted only in accordance with the articles of organization, if a mode of amending the same shall have been therein prescribed. When adopted a copy of such amendment, with a certificate thereto affixed, signed by the president and secretary, or if none, the correspondent officers, and sealed with the corporate seal, if there be any, stating the fact and date of the adoption of such amendment, and that such copy is a true copy of the original, shall be recorded in the office where the original articles are recorded; and the register shall note on the margin of the record of such original, the volume and page where every such amendment is recorded; and no amendment shall be of effect until so recorded.* Within thirty days such officers shall file a like certified copy with the secretary of State, and in case of failure so to do, shall each forfeit twenty-five dollars. Whenever the corporate name shall be changed, the secretary shall publish a notice thereof in a newspaper published at or nearest to the place of location of such corporation, for three weeks, and if he shall fail for two months so to do, shall forfeit twenty-five dollars. No change of location of any such corporation, if beyond the limits of the county, shall be valid until the articles of organization and all amendments shall have been recorded in the office of the register of deeds of the county to which the same shall be changed.

Articles to contain what. § 1772. Amendment of. § 1790. Defect in, how cured. § 1791. Amended articles as evidence. § 4181.

[An amendment of articles is inoperative until a certificate thereof is recorded with register of deeds. *Wood v. Building Assn.*, 63 Wis. 11, s. c., 22 N. W. Rep. 756.

An allegation in complaint that no certificate of an amendment to articles has been filed in office of register of deeds, is equivalent to an averment that no such certificate has been left for record. *Id.*

Above section and section 1772 are in pari materia, and must be construed together. *Id.*

If the name of a corporation be changed, it must sue and be sued, in respect to its prior rights and liabilities, by its new name. *Dousman v. Milwaukee*, 1 Pin. 81.

Although an attempt to change the name of a corporation by amendment of its articles was ineffectual because such an amendment was not

Corporate powers; purchase of stock in other corporations — Stats., § 1775.

recorded as required by section 1774, a voluntary assignment by the corporation under the new name for benefit of creditors was valid at law and in equity. *W. & H. Co. v. Witte*, 89 Wis. 537; 62 N. W. Rep. 518.]

§ 1775. (As amended April 24, 1897.) Every such corporation, when so organized, shall be a body corporate by the name designated in its articles, and shall have the powers of a corporation conferred by these statutes, necessary or proper to conduct the business or accomplish the purposes prescribed by its articles, but no other or greater; and may take by gift, devise, purchase or otherwise, and manage and hold, and may, by a vote of a majority of the stock, given at any regular meeting, or at any special meeting duly called for the purpose, sell and convey or authorize to be conveyed, all or any portion of the property owned by it, whether real, personal or mixed; and may, by a similar vote, mortgage or lease any such property, whenever it shall be necessary for its business purposes, or the protection or benefit of its property held or used by the corporate business, however the same may have been acquired. But no such corporation shall take or hold stock in any other corporation, except upon and with the assent of the holders of three-fourths of the capital stock of both the corporation proposing to take such stock and the corporation in which it is proposed to be taken; Provided, That any corporation heretofore formed or organized, or which may hereafter be formed or organized, under or in pursuance of any general or special law of this State, for the purpose of carrying on a logging or lumbering business, or for engaging in the manufacture of lumber, or of the improvement of the navigation of any river or stream, for log-driving or lumbering purposes, or the running, driving, booming, sorting, brailing or rafting of logs, timber, lumber or other materials upon or down any river or stream; and any foreign corporation, formed or organized for similar or kindred purposes, may, and upon the assent of the holders of three-fourths of the capital stock thereof, shall have authority to purchase, take and hold stock in, and in its corporate capacity become a subscriber to, the capital stock of any other corporation or corporations, foreign or domestic, created or formed for any one or more of the same or similar purposes; Provided, also, That any corporation heretofore formed or organized, or which may hereafter be formed or organized under or in pursuance of any general or special law of this State, for the purpose of mining, smelting, quarrying, or any mechanical or manufacturing purpose, upon and with the assent of three-fourths of its capital stock, may and shall have power, in its corporate capacity, to subscribe for, purchase, take and hold stock in any corporation, foreign or domestic, formed for the purpose of manufacturing, creating or gen-

erating any kind of power or light, to be used as a mechanical agency, when such power or light is to be used wholly, or in part, in facilitating the operations of such mining, smelting, quarrying or other mechanical or manufacturing company, or the transaction of its business. Provided, also, That any street railway corporation, heretofore or hereafter formed or organized under or in pursuance of any general or special law of this State, or of any other State, and which owns or controls a street railway, operated by an electric power, or which shall make the purchase hereinafter described, for the purpose of being so operated, shall have authority to purchase, take and hold, all or any part of the real and personal property, rights, privileges, ordinances and franchises of any other street railway company, foreign or domestic, operating or to operate a street railway by electric power or of any corporations, foreign or domestic, now or hereafter existing, formed for the purpose of manufacturing, creating or generating electricity for power, or light, or heat, or any other purpose, and shall have authority to purchase, take and hold stock in, and in its corporate capacity, become a subscriber to the capital stock of any other similar street railway, or any electrical corporation or corporations, foreign or domestic, now or hereafter existing; the terms of such purchase to be assented to by the holders of three-fourths of the capital stock of each company buying or selling as aforesaid, at any general or special meeting of such stockholders; the consideration for such purchase may be paid in the stock, or bonds, or both, of the purchasing company; the conveyance of property to be by deed or bill of sale, or both, in the usual form; the transfers of stock to be by indorsement, in the usual form. The electric power so acquired may be sold or leased by the purchasing company, for power or light or heat, or other purpose, to all persons and corporations, for cash, or for the stock, or bonds, or both, of any corporation to which the same is furnished; And provided, also, That all electric-light companies, foreign or domestic, now or hereafter existing, shall have all the rights, powers and privileges conferred by this section on street railway corporations. Provided, further, That any corporation organized for the purpose of locating, building, encouraging and establishing manufactories and manufacturing establishments in any city or town in this State, upon the assent of the holders of three-fourths of the capital stock thereof, shall have authority to purchase, take and hold stock in, and in its corporate capacity become a subscriber to the capital stock of any corporation so aided or encouraged, to the amount and extent of the actual cash paid or other property contributed to any such manufacturing corporation.

General powers. § 1748. Of corporations hitherto formed. § 1791.

Purchase of franchise; directors — Stats., §§ 1775a, 1776. 1788.

[Corporation can exercise only those powers expressly conferred, and those necessarily incident to purposes of its creation. *Madison, etc., Road Co. v. Watertown, etc., Road Co.*, 7 Wis. 59.

And in exercising the powers conferred upon a corporation, it may adopt any proper and convenient means directly to their accomplishment, not amounting to the transaction of a separate unauthorized business. *Id.*; *Clark v. Farrington*, 11 Wis. 306.

A boom company may make contracts for storing logs in any legal manner, and not merely as it is expressly authorized. *Boom Co. v. Plumer*, 35 Wis. 274.

A corporation is not only incapable of making a contract which is forbidden by its charter, but in general it can make only such as are necessary, either directly or indirectly, to effect the objects of its creation. *Bank v. Sherwood*, 10 Wis. 230.

While contracts which it has no authority to make may be void, contracts which are within general scope of its powers, but in excess of those powers in some particulars, are not void, unless by reason of such excess they are against public policy. *Ins. Co. v. Dhein*, 43 Wis. 421.

Under the power to loan money for one year, on bond and mortgage, a loan for two years on note and mortgage is valid. *Id.* And a bank with full power to borrow money, and authorized to loan money at 10 per cent., may discount notes at 12 per cent. *Bank v. Sherwood, supra.* But it cannot engage in a business separate and distinct from that authorized. *Clarke v. Farrington, supra.*; *Waldo v. Rty Co.*, 14 Wis. 575.

A purchaser from a corporation cannot defend an action for price of ground that it exceeded its legal powers in acquiring it. *Bank v. R. R. Co.*, 17 Wis. 372. Nor can the seller of property to a corporation who has received the price therefor, question its right to buy, or reclaim the property. *Id.*; *Burns v. R. R. Co.*, 9 Wis. 450.

A plankroad company has no power to loan money, or become security for loaned money. *Madison, etc., Road Co. v. Watertown, etc., Road Co.*, *supra.*

Where ultra vires appears on face of complaint filed by corporation, advantage may be taken of it by demurrer. *Id.* Dealings in grain by a common carrier held to be ultra vires. *Packet Co. v. Shaw*, 37 Wis. 655.

Where a corporation may receive a negotiable instrument for any purpose, the bona fide indorsees of such instruments, though given for an unauthorized purpose, will not be allowed to suffer. *Cornell v. Hichens*, 11 Wis. 353.

The taking of a mortgage to secure payment for stock in a railroad company is not an unwarranted dealing in real estate by a company. *Clarke v. Farrington, supra.*

Party having dealt unlawfully with a corporation will not be permitted to take advantage of his own wrong to the injury of the innocent person. *Id.*

When not forbidden by charter, a corporation may receive materials, labor or land in payment for stock. *Blunt v. Walker, supra.* When a corporation undertakes to make a contract entirely foreign to purposes and objects of its creation, such contracts are void. *Id.*

Corporation may receive securities for its debts created in usual course of business, in same manner as a natural person, in absence of provision to the contrary in its charter. *Blunt v. Walker*, 11 Wis. 334.

The taking of a mortgage to secure payment of such a debt cannot be called a dealing in lands. *Id.* Though it cannot be empowered to deal in real estate, yet it may acquire and transmit a title to lands as an incident to its power to make general contracts touching a particular business. When a corporation has power to make a contract, it may adopt any mode calculated to accomplish it which an individual would. *Id.*

Although it has not power to make a note for its own debt, yet it may receive one from a natural person which will be good in hands of an innocent holder to whom it has been legitimately transferred. *Id.*

Acts done by a corporation in violation of a charter are not necessarily void. They may by

such acts acquire title to property and transmit it to others. *Bank v. R. R. Co.*, 17 Wis. 372.

A corporation may sell or pledge a note and mortgage executed to it. *Bank v. Rth*, 23 Wis. 339.

A town, city or county may give or loan its credit in aid of a corporation. *Bushnell v. Beloit*, 10 Wis. 195.

The Constitution of Wisconsin expressly recognizes the power of municipal corporations to loan their credit. *Clark v. Janesville*, 10 Wis. 137.]

§ 1775a. (Chapter 221, Laws of 1883, as amended by chapter 127, Laws of 1891.) Any corporation organized under chapter 86 of the Revised Statutes of this State for the year 1878, and the acts amendatory thereof, or under any other law of this State for the same purposes, or any such corporation carrying on any of the branches of business specified in said chapter 86, may take and acquire, by lease, purchase, sale, conveyance or assignment, and thereafter own, hold and enjoy any right, privilege or franchise heretofore or hereafter granted to or conferred upon any person or persons whomsoever by any law of this State in all cases where such right, privilege or franchise would be in direct aid of the business for which such corporation so acquiring or purchasing the same was organized.

Purchasers may reorganize. § 1788.

§ 1776. The stock, property affairs and business of every such stock corporation, shall be under the care of and be managed by a board of directors, who shall be chosen annually by the stockholders from among their number, at such time and place as shall be provided by the articles of organization or the by-laws, and shall hold one year and until their respective successors are chosen, except that when classified by the articles of organization, they may be elected and hold accordingly. The directors shall choose one of their number president, and such other officers as the corporate articles and by-laws require for such term as shall be prescribed thereby; and may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election.

Quorum of directors. § 1749. Jurisdiction of court over directors. § 2237.

[Where board of directors, in issuing new stock to shareholders generally, refuse to issue to a particular stockholder his proportion thereof, he may compel its issue by suit in equity against the corporation, though he might probably have maintained an action at law for damages. *Donsman v. M. & S. Co.*, 40 Wis. 418.

When mortgage to directors to secure claims fraudulent. *Hinz v. Van Dusen*, 70 N. W. Rep. 657.

Directors held liable for corporate assets misapplied or lost through their negligence or fraud. *Gores v. Day*, 74 N. W. Rep. 787.]

§ 1788. Any person or association of persons which shall have, or may hereafter become the owner or assignee of the rights,

Dissolution; amendment of articles — Stats., §§ 1780-1791.

powers, privileges and franchises of any corporation created or organized by or under any law of this State, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree, or proceedings of any court in this State, including the courts of the United States sitting herein, may at any time within two years after such purchase or assignment, organize anew by filing articles of organization, as provided in this chapter, or elsewhere in these statutes, respecting corporations for similar purposes, and shall thereupon have the same rights, privileges and franchises which such corporation had or was entitled to have at the time of such purchase and sale, and such as are provided by these statutes applicable thereto. They may fix at what price, or for what number of shares, the rights, privileges, powers, franchises or property of such former corporations, purchased by them, shall be put into the new organization.

See § 1775a.

[A boom company organized under above section by persons who purchased the property and franchises of the company first organized, is not liable for injuries caused by an obstruction placed in river by the latter, of which the former had a knowledge. *Neff v. Boom Co.*, 50 Wis. 585; s. c., 7 N. W. Rep. 553. It seems that the successor of a former company, organized under this section, can exercise no powers not possessed by former company. *Menasha v. R. R. Co.*, 52 Wis. 414; s. c., 9 N. W. Rep. 396.]

§ 1789. Any corporation organized under any law, may, when no other mode is specially provided, dissolve, by the adoption of a written resolution to that effect at a meeting of its members specially called for that purpose, by a vote of the owners of at least two-thirds of the stock, in the case of stock corporations, and of one-half the members in other corporations; but when a mode or process of dissolution shall have been provided in the articles of organization, it shall be conducted accordingly. One copy of such resolution, with a certificate thereto affixed, signed by the president and secretary, or, if none, the correspondent officers and sealed with the corporate seal, if there be any, stating the fact and date of the adoption of such resolution, that such is a true copy of the original, the whole number of shares of stock, and of members of such corporation, and the number of members who, or of the shares of stock whose owners, voted for its adoption, shall be recorded, as an amendment to its article is required to be recorded by section seventeen hundred and seventy-four, and a like copy filed with the secretary of State. Thereupon such corporation shall cease to exist, except for winding up its affairs. Whenever the articles of organization

shall provide a term to the duration of a corporation, it shall cease to exist at the time so fixed, except as aforesaid.

See § 1774. Surrender of corporate rights. § 1763. Actions to dissolve a corporation. §§ 3240 et seq.

[Dissolution does not deprive corporate creditors of right to pursue stockholders under section 1769. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.]

MISCELLANEOUS.

§ 1790. (As amended March 22, 1895.) Any corporation organized under any special charter or general law, for any of the purposes for which corporations may be formed under this chapter, may amend its charter or articles of organization, according to the provisions of section seventeen hundred and seventy-four; and may at a meeting of the members, by a vote of the owners of at least two-thirds of the stock, in the case of stock corporations, and of a majority of the members in other corporations, abandon its organization and organize under this chapter, by the adoption of articles of organization according to section seventeen hundred and seventy-two. A true copy of such articles, together with a certificate of the president and secretary, sealed with the corporate seal, stating the fact and date of adoption of such articles, that such copy is a true copy of the original, the whole number of the shares of stock and of the members of such corporation, and the number of members who voted, or of the shares of stock whose owners voted, for its adoption, shall be recorded and filed by the president or secretary, in like manner, with like effect, and subject to the like penalties, prescribed in section seventeen hundred and seventy-two. Provided, That in amending the charter of any corporation organized under any special charter, or any general, or private and local law, by virtue of which its charter or articles of organization were not required to be recorded in the office of the register of deeds of the county in which such corporation was located, it shall be sufficient to record the certified copy of such amendment in the office of register of deeds of the county in which such corporation is located, and to file a like certified copy with the secretary of State.

Articles, what to contain. § 1772. May be amended. § 1774. Defects, how cured. § 1791. Amended articles as evidence. § 4181.

§ 1791. (As amended by chapter 118, Laws of 1883.) Every corporation heretofore lawfully organized under any general law, for any of the purposes embraced in section seventeen hundred and seventy-one, and existing at the adoption of these statutes, shall continue in existence in the same manner, and have the same powers, as if lawfully organized under this chapter, and be gov-

erned by these statutes; and every joint-stock company organized under the provisions of chapter seventy-three of the Revised Statutes of eighteen hundred and fifty-eight, prior to the first day of January, eighteen hundred and seventy-five, shall be deemed legally organized, and remain in existence with the rights and privileges granted thereby, unaffected by the repeal thereof. Whenever articles of association have heretofore and since the passage of said chapter 86, been filed in the office of the secretary of State, or in the office of the register of deeds, for any of the purposes for which corporations may be formed under said chapter 86, and an organization has been formed under and pursuant to said articles, such organization is hereby declared to be legal, and the corporation to be duly organized; Provided, Such corporation within six months after the passage and publication of this act, perfect its organization under the laws existing.

[See *In re Klaus*, 67 Wis. 401.]

CHAPTER XCIV.

Banks and Banking.

Sec. 2021. Corporations not to engage in banking business without authority.

§ 2021. No corporation, without being authorized by law, shall be in any manner concerned in receiving deposits, making discounts, or issuing notes or other evidences of debts, to be loaned or put in circulation as money; and no person or association of persons or corporation shall issue any bills, or promissory notes or other evidences of debt, for the purpose of loaning them or putting them in circulation as money, unless thereto especially authorized by law; and every director, agent, officer or member of a corporation, and every person who shall violate any provision of this section, shall forfeit one thousand dollars.

See Const., art. XI, §§ 1, 4, 5.

PART II.

The Acquisition and Transmission of Property.

TITLE XX. REAL PROPERTY.

CHAPTER XCIX.

General Provisions.

Sec. 2200a. Limitation on holding of real estate by corporations.

§ 2200a. 1. It shall be unlawful for any alien not a resident of this State or of the United States, or for any corporation not created by or under the laws of the United States, or of some State or territory of the

United States, to hereafter acquire, hold or own more than three hundred and twenty acres of land in this State, or any interest therein, except such as may be acquired by devise, inheritance or in good faith in the course of justice in the collection of debts heretofore created.

2. No corporation or association more than twenty per cent. of the stock of which is or may be owned by any person, corporation or association who are aliens, not residents of this State or of the United States, shall hereafter acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein, except such as may be acquired in good faith in the course of justice in the collection of debts.

3. All property acquired, held or owned in violation of the provisions of this act, shall be forfeited to the State of Wisconsin, and it shall be the duty of the attorney-general to enforce every such forfeiture.

See § 1748 (6), cross-references.

[Restrictions imposed upon amount of property that a corporation may hold cannot be taken advantage of collaterally by private persons, but only in a direct proceeding by the State which created it. *Smith v. Sheeley*, 12 Wall. 358; *Jones v. Habersham*, 107 U. S. 174, 178; s. c., 2 Sup. Ct. Rep. 336.]

TITLE XXI. ALIENATION AND DESCENT OF REAL PROPERTY.

CHAPTER C.

Of Alienation by Deed.

Sec. 2216. Execution of conveyances by corporations.

§ 2216. All conveyances executed within this State, of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such. And when such conveyances are of lands, or any interest therein, owned by a corporation organized under any law of this State, they shall be signed by the president, or other authorized officers of the corporation, sealed with the corporate seal, and countersigned by the secretary or clerk thereof; and all corporate conveyances heretofore so executed shall be valid. The persons executing any such conveyances may acknowledge the execution thereof before any judge or clerk of a court of record, court commissioner, county clerk, register of deeds, notary public, or justice of the peace. The officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

See § 1748 (6), cross-references, and Act of 1895, at p. 36.

[A deed of land by a corporation, to be valid, must, under above section, be signed by its president, or other authorized officer, sealed with its

Actions; place of trial and service of summons — Stats., §§ 2619, 2637.

seal, and countersigned by its secretary or clerk. *Galloway v. Hamilton*, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

A subsequent ratification of a deed of corporate land executed only by the president, cannot affect the lien of an intervening judgment creditor of the corporation. *Galloway v. Hamilton*, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

A deed of corporate land executed without authority by president, on the eve of insolvency, not followed by change of possession before levy of an execution by a creditor, will not confer an equitable title as against such creditor, though there had been previous negotiations about the purchase and the purchase money was paid. *Galloway v. Hamilton*, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

Where a mortgage given by a corporation to secure payment of its note was executed by its officers who owned nearly all the corporate stock, the corporation and such officers were estopped from setting up ultra vires. *Whiter v. F. M. Co.*, 78 Wis. 543; s. c., 47 N. W. Rep. 729.]

PART III.

Actions and Proceedings in Civil Matters.

TITLE XXV. CIVIL ACTIONS IN COURTS OF RECORD.

- Chap. 119. Place of trial.
129. Manner of commencing actions.
124. Of attachment.
126. Of injunctions and of receivers.

CHAPTER CXIX.

Place of Trial.

Sec. 2619. Place of trial in actions against corporations.

§ 2619. The proper place of trial of civil actions is as follows, respectively:

* * * * *

Fourth. Of an action, except appeals in condemnation proceedings, against any railroad corporation, as defined by section 1861, any county through or into which the railroad owned or operated by such corporation runs.

Fifth. Of an action against any other corporation, existing under the law of this State, or county in which it is situated or has its principal office or place of business, or in which the cause of action or some part thereof arose.

See § 1748 (2), cross-references.

[“Cause of action,” as used in subdivision 5, seems to be synonymous with “right of action,” and includes the acts or omissions without which there would be no cause of action or right to recover. *Brail v. Northwestern Assn.*, 72 Wis. 430; s. c., 39 N. W. Rep. 529.]

The joinder of causes of action properly triable in different counties is ground for demurrer. *Hackett v. Carter*, 38 Wis. 394.

When defendant corporation has absolute right to have place of trial changed to county in which said corporation is located. *Maher v. Lumber Co.*, 86 Wis. 530; s. c., 57 N. W. Rep. 357.]

CHAPTER CXX.

Manner of Commencing Actions.

Sec. 2637. Actions against corporations; how commenced.

§ 2637. Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons and the accompanying complaint or notice aforesaid, shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof, as follows:

* * * * *

6. If against a railroad corporation whose general office is within this State, to the president, secretary, superintendent, general manager, or general solicitor thereof, if either shall reside and be within the county in which such action is brought; and in case neither of the officers named reside and are in such county, then to any station, freight or ticket agent thereof who shall reside and be within such county.

7. If against a railroad corporation, whose general office is, or all whose aforesaid officers shall reside or be without the State, to any station, freight, ticket or other agent thereof within the State.

8. If against a corporation owning or operating sleeping or hotel cars, or the like, which has not its general office in the State, to any person having charge of any of its cars, or any agent found within the State.

9. If against any insurance corporation, not organized under the laws of this State, to the agent or attorney thereof, having authority therefor by appointment under the provisions of section nineteen hundred and fifteen or section nineteen hundred and fifty-three, or to any agent of such corporation within the definition of section nineteen hundred and seventy-seven, in the State.

10. If against any other corporation organized under the laws of this State, to the president, or other such chief officer, vice-president, secretary, cashier, treasurer, director, or managing agent thereof.

11. If against any other foreign corporation, to any such officer being within the State, or to any agent having charge of or conducting any business therefor in this State, or any trustee or assignee of such corporation. But such service can be made upon a foreign corporation only, either when it has property within the State or the cause of action arose therein, or the cause of action exists in favor of a resident of the State.

See § 1748 (2), cross-references. Actions in justice's court, service on corporation, § 3601.

[The term “managing agent” is construed to mean an agent having a general supervision of the affairs of the corporation. *Transp. Co. v. Whittaker*, 16 Wis. 220. The captain of a steamboat belonging to a foreign corporation is not such a managing agent. *Transp. Co. v. Whittaker*, 16 Wis. 220.]

But a person exercising a general supervision over the business of a bank, and who closed up its affairs, was held to be a managing agent, although he made affidavit that he was not such. *Carr v. Bank*, 19 Wis. 272.

"Principal officer" is one whose oversight or agency extends either over the whole or some particular department of the general business of the corporation as a president, who has ordinarily a general oversight over its entire business, a secretary over its records, or a treasurer over its moneys. *F. L. & T. Co. v. Warring*, 20 Wis. 290.

Service upon officer not within the statute is ineffectual. *Alexandria v. Fairfax*, 95 U. S. 774.

A service cannot be made upon an officer not named by title of his office. *Alexandria v. Fairfax*, 95 U. S. 774; *Knowlton v. Watertown*, 130 id. 327; s. c., 9 Sup. Ct. Rep. 539, 542.

In an action brought against a corporation within subdivision 11, it is not necessary that the existence of some of the facts enumerated should be alleged in the petition to give jurisdiction. *Friezen v. Ins. Co.*, 30 Fed. Rep. 349.

Where, in violation of section 1750, principal office and books of a domestic corporation are kept outside of the State, and its principal managing officer actually resides in another State, one having the supervision of affairs of the corporation in the State will be held to be its "managing agent," upon whom process may be served within meaning of subdivision 10, section 2637. *Wickham v. South Shore Co.*, 89 Wis. 23; s. c., 61 N. W. Rep. 287.

Persons held to be general agents upon whom summons might be served, of an Illinois corporation, under subdivision 11. *Burgess v. Aultman*, 80 Wis. 292; s. c., 50 N. W. Rep. 175.]

CHAPTER CXXIV.

Of Attachment.

Sec. 2731. Affidavit for attachment, requisites of.
2736. Service of writ of attachment on foreign corporation.

2738. Attachment of shares of stock.

§ 2731. Before any writ of attachment shall be executed, the plaintiff, or some one in his behalf, shall make and annex thereto an affidavit, stating that the defendant named in such writ is indebted to the plaintiff in a sum exceeding fifty dollars, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract, express or implied, or upon judgment or decree, and containing a further statement that the deponent knows, or has good reason to believe, either:

* * * * *

6. That the defendant is a foreign corporation; or if created under the laws of this State, that all the proper officers thereof on whom a service of summons do not exist, are non-residents of the State, or cannot be found;

* * * * *

Or, an affidavit stating that a cause of action sounding in tort exists in favor of the plaintiff and against the defendant named in such writ, that the damages sustained and claimed exceed the sum of fifty dollars, specifying the amount claimed, and the further statement, * * *.

2. That the defendant is a foreign corporation.

See § 1748 (2), cross-references.

[Stating indebtedness to be a specified sum, "as near as deponent can now estimate the same," is insufficient. *Lathrop v. Snyder*, 16 Wis. 582. As is also "as near as the plaintiff is able to determine." *Hawes v. Clement*, 64 id. 152; s. c., 25 N. W. Rep. 21. But an averment that it is a certain sum, "as near as may be," is good. *Mairet v. Marriner*, 34 Wis. 582.]

§ 2736. The officer having the writ of attachment shall execute the same without delay, etc. * * * In case of a non-resident or a foreign corporation, the sheriff shall serve such copies on any agent of such defendant in the county, if any be known to him.

§ 2738. * * * Rights or shares in the stock or property of any association or corporation, with the interests and profits thereon, and other personal property, shall be attached in the same manner in which an execution may be levied on the same, and the provisions respecting the levy of an execution thereon shall be applicable to the execution of an attachment. Personal property shall be bound by the writ of attachment from the time the same is attached thereby.

Stock is personal property. § 1751.

[Property in hands of a duly appointed and qualified receiver is not subject to attachment, although he may not have reduced it to actual possession. *Hagedorn v. Bank*, 1 Pin. 61.]

CHAPTER CXXVI.

Of Injunctions and Receivers.

Sec. 2780. Injunction to suspend business, not to be granted.

2787. Receiver may be appointed; when.

2787a. Duties of receivers.

§ 2780. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or presiding judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation, except where the State is a party to the proceedings, unless the plaintiff give a written undertaking, executed by two sufficient sureties, to be approved by the court or judge, to the effect that the plaintiff will pay all damages not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.

See § 1748 (2), cross-references.

[An injunction to restrain stockholder from voting upon corporate stock at an election of directors is not forbidden. *Reed v. Jones*, 6 Wis. 680.]

Receivers; actions against corporations — Stats., §§ 2787, 2787a, 3204.

§ 2787. A receiver may be appointed:

4. In cases provided by any statute, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5. In such cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this chapter.

Insolvent corporation may surrender its rights. § 1763. May be enjoined. § 3218. Appointment of receiver. § 3246.

[Where property of a corporation is being mismanaged, and is in danger of being lost to the stockholders and creditors through collusion and fraud by its officers and directors, a receiver may be appointed under subdivision 5 of above section. *Haywood v. Lumber Co.*, 64 Wis. 639; s. c., 26 N. W. Rep. 184.

In an action of account against an insolvent corporation by a judgment creditor, a receiver may be appointed. *Adler v. Milwaukee Co.*, 13 Wis. 57.

In an action by a stockholder against a corporation and its officers and directors for an accounting, appointment of a receiver, etc., a complaint alleging that such officers and directors have fraudulently diverted the property and profits of the corporation to their own personal use and benefit by voting themselves salaries and other fraudulent acts, is sufficient without alleging a demand upon such officers and directors for the correction of the abuse, since it is apparent that such a demand would be nugatory. *Eschweiler v. Stowell*, 78 Wis. 316; s. c., 47 N. W. Rep. 361.

A creditor at large of a corporation, whose remedy at law has not been exhausted, cannot maintain an action in equity for appointment of a receiver. *Hinckley v. Finster*, 83 Wis. 64; s. c., 53 N. W. Rep. 21. Neither a stockholder as such nor a corporation itself can maintain an action in equity for purpose of winding up the business of the corporation. *Id.*

Supreme Court has power to grant stay of execution of an order appointing a receiver of a corporation. *Janesville v. Water Co.*, 89 Wis. 159; s. c., 61 N. W. Rep. 770.]

§ 2787a. Whenever in the course of any action or proceeding, a receiver shall be appointed by any of the courts of this State, to manage or conduct the mercantile or manufacturing business of any person, firm or corporation, or to settle, adjust or close up any such business, it shall be the duty of such receiver to report immediately to the court so appointing him, the amount due by such person, firm or corporation, to employees and laborers in such business; and it shall be the duty of said court to order the said receiver to pay out of the first receipts of said business, after the payment of costs, debts due the United States or the State of Wisconsin, all taxes and assessments levied and unpaid, and the current expenses of carrying on or closing said business under his administration, the wages of all such employees and laborers, which had accrued within three months immediately prior to the appointment of such receiver.

See § 2787, note.

[Mortgagees of property belonging to an insolvent corporation released their lien and allowed receiver to sell the property and use the proceeds,

upon the faith of his promise to pay them at a future time the value of the property thus sold. Receiver derived no personal benefit from stock released. Held, that his personal promise was to answer for debt of another and void by statute of frauds. *Bray v. Parcher*, 80 Wis. 16; s. c., 49 N. W. Rep. 111.

A right of action for libel by an insurance company, though libel resulted in pecuniary injury to the corporation, is not assignable and does not pass to the receiver. *Ins. Co. v. Sentinel Co.*, 81 Wis. 207; s. c., 51 N. W. Rep. 410.]

TITLE XXVII. ACTIONS AND PROCEEDINGS IN SPECIAL CASES.

CHAPTER CXL.

Of Actions and Proceedings by and against Corporations.

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§ 3204. Actions and proceedings by or against corporations, may be commenced in the same manner that personal actions and proceedings are commenced by or against natural persons, and the proceedings in such actions shall be the same as in actions by natural persons.

Corporations may sue and be sued. § 1748 (2), and notes.

[Under above section an action may be commenced by attachment in a justice's court against a domestic corporation, as well as against a natural person. *Ruthe v. R. R. Co.*, 37 Wis. 345. Foreign corporations are liable to garnishment in this State, where they own property here, or the cause of action, in respect to them arose here. *Brauser v. Ins. Co.*, 21 Wis. 506.]

Actions against corporations — Stats., §§ 3205-3209.

§ 3205. In an action by or against a corporation, the complaint must aver that the plaintiff or defendant, as the case may be, is a corporation. If it was incorporated under any law of this State, that fact must be averred; if it was not so incorporated, an averment that it is a foreign corporation is sufficient. The complaint need not set forth or specially refer to any act or proceeding by or under which, the corporation was made.

[In an affidavit for garnishee process against "The New England Insurance Company," it was held that the name implied the corporation. *Brauser v. Ins. Co.*, 21 Wis. 506. The complaint in a suit brought in a corporate name need not aver plaintiff to be a corporation. *Bank v. Knowlton*, 12 Wis. 624; *Chickering Lodge v. McDonald*, 16 id. 113; *F. L. & T. Co. v. Fisher*, 17 id. 114. In case of foreign corporation, it is sufficient to plead the act of incorporation by reciting its title, with averments as to legislative authority by which it was enacted. *Ins. Co. v. Cross*, 18 Wis. 109. Such corporation is not required, any more than a domestic one, to prove its corporate existence, unless such existence is specifically denied in the answer. *M. & R. Co. v. Smith*, 33 Wis. 530. (Foregoing decisions were under former statutes.)

This section probably applicable to private corporations only. *Smith v. Janesville*, 52 Wis. 680; s. c., 9 N. W. Rep. 789.

If the name of a corporation be changed it must sue and be sued in respect to its prior rights or liabilities by its new name. *Dousman v. Milwaukee*, 1 Pin. 81.

Denial by a corporation of an averment that it was incorporated in a certain manner is bad on demurrer. *Brown v. Gas Co.*, 21 Wis. 51.

A defendant who pleads a counterclaim in an action by a corporation is estopped to deny plaintiff's corporate existence. *Imp. Co. v. Holway*, 85 Wis. 344; s. c., 55 N. W. Rep. 418.]

§ 3206. In actions or proceedings by or against any corporation, a mistake in the naming of such corporation shall be stated in the defendant's verified answer, together with the true name of such corporation; otherwise such mistake shall be deemed to have been waived.

§ 3207. A corporation created by or under the laws of any other State, or country, or of the United States, may prosecute or defend an action or proceeding in the courts of this State, in the same manner as corporations created under the laws of this State, except as otherwise specially prescribed by law. But such foreign corporation cannot maintain an action founded upon an act, or upon any liability or obligation, express or implied, arising out of, or made, or entered into, in consideration of any act which the laws of this State forbid a corporation or any association of individuals to do, without express authority of law.

Foreign corporation must appoint attorney for process. § 1750a. And must file statement with secretary of State. § 1770a. Action against, when it has ceased to act. § 3208.

[In absence of voluntary appearance, courts may acquire jurisdiction of a foreign corporation only in manner pointed out by statute. But a general appearance by such a corporation gives jurisdiction to render personal judgment against it. *Congar v. R. R. Co.*, 17 Wis. 477.

A general demurrer does not raise question whether plaintiff corporation was authorized to do a certain act. *F. L. & T. Co. v. Fisher*, 17 Wis. 114.

Foreign corporations may transact in this State any business authorized by their charters and not inconsistent with the laws and policy of the State; and contracts arising out of such transactions will be enforced in courts of this State at suit of such corporations. *Ins. Co. v. Cross*, 18 Wis. 109.

A corporation created by one State has no power to do any corporate act in another State, except by the express or implied consent of the latter, and upon such terms as it may prescribe. *Morse v. Ins. Co.*, 30 Wis. 496.]

§ 3208. An action for the recovery of money may be commenced and prosecuted to judgment against a corporation created by or under the laws of any other State or country or of the United States, although such corporation may have ceased from any cause whatever to act in whole or in part as a corporation, in the same manner as though it had not so ceased to act; and satisfaction of the judgment may be enforced out of any property in this State, which such corporation owns or has any interest in, or would own or have an interest in had the same not ceased to act as aforesaid, whether held or controlled by such corporation or by a trustee, assignee, agent or other person, for the use and benefit in whole or in part of such corporation or the creditors thereof or both; and any attachment issued in such action may be executed on any such property.

See § 3207, cross-references, and § 3209.

[Under Act of 1854, providing for prosecution of suits against foreign corporations which had ceased to act as such, certificates of indebtedness issued by such corporations are admissible in evidence under the common money counts. *Bank v. Corwith*, 6 Wis. 551.

Proceedings in a New York court dissolving a corporation of that State, and enjoining creditors from bringing actions against it, given full force in this State by comity. *Gilman v. Ketcham*, 84 Wis. 60; s. c., 54 N. W. Rep. 395.]

§ 3209. The plaintiff in such action shall, to the extent of the final judgment therein, have a lien upon all such property and interests aforesaid, from the time of the filing of the complaint in such action, unless such corporation shall file with the clerk an undertaking in double the amount claimed to be due to the plaintiff executed by two or more sureties in its behalf resident freeholders of this State, to the effect that the corporation will satisfy the final judgment that may be recovered in favor of such plaintiff in such action within sixty days from the rendition thereof. Such undertaking shall be of no effect unless accompanied by the affidavit of the sureties, as provided in section three thousand and sixty-five, and such sureties upon being excepted to must justify in like manner as there directed.

See § 3208.

Sequestration; distribution; injunction — Stats., §§ 3216-3219.

§ 3216. Whenever a judgment shall be obtained against any corporation incorporated under the laws of this State and an execution issued thereon shall have been returned unsatisfied in whole or in part, upon the petition of or by an action commenced by the person obtaining such judgment or his representatives, the circuit court within the proper county may sequester the stock, property, things in action, and effects of such corporation, and may appoint a receiver of the same.

Appointment of receiver. § 2787.

[The capital stock is a trust fund for payment of corporate debts. *Adler v. Milwaukee, etc., Co.*, 13 Wis. 57; *Nazro v. Ins. Co.*, 14 id. 295. And after return of execution against a corporation unsatisfied, a creditor's bill may be maintained by the judgment creditor in behalf of himself and such other creditors as may elect to become parties, to compel taking account of corporate assets and debts and appointment of receiver. As against stockholders, such action may be maintained independent of statute, even where a creditor's bill has been abolished. *Adler v. Milwaukee, etc., Co.*, 13 Wis. 57.

In an action under above section against an insolvent corporation, the complaint is good although, in addition to the necessary averments, it alleges a previous voluntary assignment of all corporate property for benefit of creditors, it being further alleged that such assignment was made with fraudulent intent. *Powers v. Paper Co.*, 60 Wis. 23; s. c., 18 N. W. Rep. 20.

Averments in complaint that defendant is a member and shareholder of a joint-stock company is not an averment that said company is a corporation. *Bank v. Goff*, 31 Wis. 77.

In an action under sections 3216-3228 (other than those named in section 3218), where it is not sought to hold officers or stockholders personally liable under section 3221, the court has power only to sequester property, appoint receiver, and compel the corporation to account. *Clark v. Printing Co.*, 50 Wis. 416; s. c., 7 N. W. Rep. 300.

As to the general scope of the two preceding sections, see *Pierce v. Milwaukee Cons. Co.*, 38 Wis. 253.

Under sections 3216-3228, an attachment creditor of a corporation whose execution has been returned unsatisfied, may maintain action to sequester the property, and have a receiver appointed, in order that there may be a fair and equal division of the corporate assets among all its creditors; and in such action all other creditors may be enjoined from pursuing their own remedies, and officers of the law may be compelled to deliver to the receiver all corporate property held by them on attachment or execution. Whether such an action could be maintained without the statute, not determined. *Ballin v. Bank*, 78 Wis. 401; s. c., 47 N. W. Rep. 516.

Creditor whose judgment was obtained in a Federal court in this State is entitled to his statutory remedy, such a judgment standing upon same footing as judgment of a superior State court. *Ballin v. Bank*, 78 Wis. 401; s. c., 47 N. W. Rep. 516.

Above section applies only to corporations "incorporated under the laws of this State." *Iron Co. v. Trust Co.*, 90 Wis. 570; s. c., 63 N. W. Rep. 752; 64 id. 323.

In an action by creditors to sequester the property of an insolvent corporation, complaint must allege what. *Ballin v. Bank*, 89 Wis. 278; s. c., 61 N. W. Rep. 118.

Assets of an insolvent corporation are not a trust fund, for benefit of creditors, when. 1d.]

§ 3217. In the final order in any such action, the court shall direct a just and fair distribution of the property of such corpora-

tion and of the proceeds thereof to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in section three thousand two hundred and forty-five.

[Moneys in hands of sheriff made upon executions against an insolvent corporation are subject to sequestration as a part of corporate assets when they are fruit of fraudulent combination between the directors and the execution creditor for purpose of giving the latter a legal preference over other creditors. *Ford v. Bank*, 87 Wis. 363; s. c., 58 N. W. Rep. 766. An insolvent corporation cannot prefer a creditor. 1d.]

§ 3218. Whenever any corporation having banking powers, or having the power to make loans or pledges or deposits, or authorized by law to make insurance, shall become insolvent or unable to pay its debts or shall neglect or refuse to pay its notes or evidences of debts on demand or shall have violated any of the provisions of its act of incorporation or of any other law binding on such corporation, any court having jurisdiction may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

See § 3219.

[If any stockholder or creditor of a corporation, such as is described in above section, is aggrieved by a proceeding against such corporation, he may file his complaint and procure an injunction under said section, and proceed to a final settlement of the affairs of the corporation. *Bank v. Bank*, 19 Wis. 490.

A judgment creditor of a bank may maintain an action in behalf of himself and all other creditors who may choose to become parties thereto, against the bank jointly with the stockholders, to reach and appropriate its assets, and enforce the liability of the stockholders. *Bank v. Chandler*, 19 Wis. 434.

Under above section, the appointment of a receiver and issuance of an injunction restraining the corporation from doing any corporate act is such "different provision." *Ins. Co. v. Sentinel Co.*, 81 Wis. 207; s. c., 51 N. W. Rep. 440.

An injunction under above section, restraining an insolvent insurance company from exercising any of its corporate rights, privileges or franchises, restrains the prosecution by it of an action for libel commenced before the issuance of such injunction. *Ins. Co. v. Sentinel Co.*, 81 Wis. 207; s. c., 51 N. W. Rep. 440.]

§ 3219. Such injunction may be issued upon the commencement of an action for the purpose of closing up the business of such corporation, by the attorney-general in the name of the State, or by any creditor or stockholder of such corporation, or at any time thereafter upon proof of the facts required to authorize the issuing of the same. The court may in any stage of such action appoint one or more receivers to take charge

Action against corporations; directors, etc., as parties — Stats., §§ 3220-3224.

of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due and the property that may belong to such corporation, who shall in all respects possess the powers and authority conferred and be subject to all the obligations imposed upon receivers in other cases, and in all respects be subject to the control of the court.

See §§ 3218, 3236.

[A creditor of an insolvent corporation may bring action under sections 3218-3226 on behalf of all creditors, for purpose of closing up its business, to enforce the liabilities of its officers, directors and stockholders, including not only liability specially created by statute but also the liabilities arising out of law for misappropriation and embezzlement of funds, for negligence in permitting the same, and the liability to repay the dividends unlawfully declared and received, and it is immaterial that plaintiff was not a creditor of the corporation when such unlawful dividends were declared. *Hurlbut v. Marshall*, 62 Wis. 590; s. c., 22 N. W. Rep. 852.]

Under two foregoing sections, creditor or stockholder of an insurance corporation may maintain action to restrain the exercise of its corporate rights, etc., for the appointment of a receiver, and to close up its business. In re Ins. Co., 77 Wis. 366; s. c., 46 N. W. Rep. 441.

Fact that the dissolution of a corporation is prayed for in such action does not impair jurisdiction to grant the relief authorized by said sections. In re Ins. Co., 77 Wis. 366; s. c., 46 N. W. Rep. 441. Such an action having been commenced and an injunction granted and a receiver appointed, an application by the attorney-general for an order that the corporation show cause why its business should not be closed and a receiver appointed was properly denied. *Id.*]

§ 3220. Whenever such injunction shall issue against a bank for any violation of its charter on the application of any creditor, the court shall proceed to final judgment in such case, and adjudge a forfeiture, if the proof be sufficient, notwithstanding such creditor may settle with such corporation; and in all such cases the attorney-general, under the direction of the governor or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued if either of them so appear and prosecute such action to final judgment.

Actions to vacate charter. §§ 3240-3250. See § 3221.

§ 3221. If such action have been commenced by a creditor of any corporation whose directors, trustees or other officers or stockholders are made liable by law for the payment of such debt, in any event or contingency, such directors, trustees or other officers or stockholders or any of them may be made parties to the action, either at the commencement thereof or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability.

See § 3220.

[If practicable, all stockholders must be made parties. *Adler v. Brick Co.*, 13 Wis. 57. The ac-

tion should be against the corporation and all stockholders, unless some sufficient reason for admitting any of them be shown. *Coleman v. White*, 14 Wis. 700.]

Under above section, a creditor of a bank, existing under laws of this State, may, without having obtained a judgment at law against it, maintain an action (in behalf of himself and of other creditors who may choose to become parties) against the bank jointly with its stockholders, to obtain the relief provided for by sections 3218, 3219, 3225 and 3226. *Cleveland v. Bank*, 17 Wis. 545.

See *Clarke v. Printing Co.*, 50 Wis. 416; s. c., 7 N. W. Rep. 309.]

§ 3222. If any creditor of such corporation desires to make such directors, trustees, or other officers or stockholders, parties to the action after a judgment therein against the corporation, he may do so by filing a supplemental complaint against them founded upon such judgment; and if such judgment was rendered in an action instituted by the attorney-general, such creditor may on his own application be made plaintiff therein, and may in like manner make the directors, trustees or other officers or stockholders sought to be charged, defendants in such action.

[Above section merely extends remedy to such creditors as may choose to proceed to judgment against the corporation before resorting to the equitable proceeding provided by the statute. *Cleveland v. Bank*, 17 Wis. 545.]

§ 3223. Whenever any creditor of any corporation shall seek to charge the directors, trustees or other officers or stockholders thereof, on account of any liability created by law, he may commence and maintain an action for that purpose in the circuit court, and may at his election join the corporation in such action.

Stockholders' liability. §§ 1755, 1756, 1769. Corporation may be sued. § 1748 (2).

[Above section relates to corporations of all kinds, whether moneyed or otherwise. *Sleeper v. Goodwin*, 67 Wis. 577, 588; s. c., 31 N. W. Rep. 335.]

§ 3224. The court shall proceed therein as in other cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred and be subject to all the obligations imposed on receivers by the provisions of section three thousand two hundred and nineteen; but if, upon the filing of the answer or upon the taking of such account, it shall appear that the corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed without appointing any receiver to ascertain the respective liabilities of such directors, trustees or other officers and stockholders, and enforce the same by its judgment as in other cases.

[See *Sleeper v. Goodwin*, 67 Wis. 577, 590; s. c., 31 N. W. Rep. 335.]

Judgment; injunction to restrain proceedings; discovery — Stats., §§ 3225-3228, 3236, 3237.

§ 3225. Upon a final judgment being rendered in any action to restrain a corporation or against the directors, trustees, officers, or stockholders, the court shall cause just and fair distribution of the property of such corporation and of the proceeds thereof, to be made among its creditors, in the order prescribed in section three thousand two hundred and forty-five.

§ 3226. In all cases in which the directors or other officers of a corporation or the stockholders thereof, shall have been made parties to an action in which judgment shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the corporation. If the debts of the corporation, or any part thereof, shall still remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and adjudge the amount payable by each, and enforce the judgment as in other cases.

See § 1755, cross-references.

§ 3227. Whenever any action shall be commenced against any corporation, its directors, trustees or other officers or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party and at any stage of the proceedings, restrain all proceedings by any other creditor against the defendant in such action; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment which shall be made in such action and from any distribution which shall be made under such judgment.

§ 3228. In every such action, the court may compel such corporation to discover any stock, property, things in action or effects, alleged to belong or to have belonged to it, the transfer and disposition thereof and the consideration and all the circumstances of such disposition. Every officer, agent or stockholder of such corporation, and every person to whom it shall be alleged that any transfer of property or effects of such corporation has been made, or in whose possession or control the same is alleged to be, may be compelled, in the discretion of the court, to testify in relation thereto, and to answer any questions touching the transfer or possession of such property or effects, although such answer may expose the corporation of which he is a member, to a forfeiture of

its corporate rights or any of them, or such witness to a prosecution for a criminal fraud; but such answers shall not be used as evidence upon any information, indictment or other criminal prosecution or proceeding against him.

[The power conferred upon a court, in respect to any person to whom it is alleged that any transfer of property of an insolvent corporation has been made, is merely to compel such person "to testify in relation thereto." *Clarke v. Printing Co.*, 50 Wis. 416; s. c., 7 N. W. Rep. 309.]

§ 3236. In an action for that purpose commenced by the attorney-general in the name of the State in any circuit court against a corporation, such court may restrain such corporation by injunction from assuming or exercising any franchise, liberty or privilege, or transacting any business, not authorized by its charter; and in the same manner, may restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by any law of this State; and such court, pending such action, may issue such injunction and continue the same until final judgment shall have been rendered therein.

See § 3219.

[Where one or more have obtained, through fraud, possession of corporation, and presumed to exercise its functions, and are possessed of its franchise, the court will entertain bill filed by parties aggrieved, as a matter of private right; and where such possession has been acquired by means of a judicial process fraudulently used, and after acquirement of the franchise, by means thereof, it is abandoned, a bill filed by the aggrieved parties will be entertained to annul all that had been accomplished by the improper use of the process of the court, and the parties will be placed in statu quo. *Putman v. Sweet*, 2 Min. 302. In such proceeding the corporation should be made a party. 1d.]

Courts of equity have jurisdiction, upon the information of the attorney-general, to restrain corporations from excess or abuse of corporate franchises. *Atty.-Gen. v. Ry. Co.*, 35 Wis. 426.

Above section neither confers nor limits jurisdiction of the Supreme Court. *Atty.-Gen. v. Ry. Co.*, 35 Wis. 426.

The attorney-general cannot sue in a matter affecting private rights and interests only. *Atty.-Gen. v. Academy*, 52 Wis. 469; s. c., 9 N. W. Rep. 391.]

§ 3237. The circuit court shall have jurisdiction over directors, managers, trustees, and other officers of corporation:

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. To order and compel payment by them to the corporation whom they represent and to its creditors of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees or other officers.

3. To suspend any such director, trustee or other officer from exercising his office, whenever it shall appear that he has abused his trust.

4. To remove any such director, trustee or officer from his office, upon proof or conviction of gross misconduct.

5. To direct if necessary new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal.

6. In case there be no such body or board or all the members of such board be removed, then to report the same to the governor, who shall be authorized to fill such vacancies.

7. To set aside all alienations of property made by the directors, trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation, knew the purposes for which it was made; and

8. To restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made.

See § 1748 (4), cross-references, and § 1776. Jurisdiction conferred, exercised by whom. § 3239.

[A corporation having conveyed all its property to a new corporation, to defeat its creditors, and then permitted one of its directors to withdraw certain of the assets, held, that the creditors were entitled to relief, under above section. *South Bend, etc., Co. v. Cribb Co.*, 72 N. W. Rep. 749.]

§ 3238. When any visitorial powers over any corporation are or shall be vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to divest or impair the powers so vested; nor shall the visitorial powers of such body or officer be exclusive unless expressly so declared.

§ 3239. The jurisdiction conferred by section three thousand two hundred and thirty-seven shall be exercised in an action prosecuted by the attorney-general in the name of the State, or by any creditor of such corporation, or by any director, trustee or officer thereof having a general superintendence of its concerns, as the case may require, or as the court may direct.

§ 3240. An action may be brought by the attorney-general in the name of the State, whenever the legislature shall direct, against a corporation created by or under the laws of this State for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact

by the persons incorporated or by some of them, or with their knowledge and consent.

Corporation may sue and be sued. § 1748 (2), cross-references. Action to annul charter of bank. § 3220.

§ 3241. An action may be brought by the attorney-general, or by any private party, in the name of the State, on leave granted therefor by the supreme court upon cause shown, for the purpose of vacating the charter, or annulling the existence of any corporation created by or under the laws of this State, except a municipal corporation, whenever such corporation shall:

1. Offend against any of the provisions of any law, by or under which it shall have been created, altered or renewed; or

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges or franchises; or

5. Whenever it shall exercise franchises or privileges not conferred upon it by law.

Surrender of corporate rights. § 1763. Voluntary dissolution. § 1789.

[The records and residence of principal officers of private corporations created by this State must be within the State, so far as needful to give effect to the statutes thereof; and continued neglect of such duty will be cause of forfeiture. *State v. Ry. Co.*, 45 Wis. 579.]

Railroad company discontinuing its road where charter required it to be maintained is a cause of forfeiture under subdivisions 1 and 2 of foregoing section. *Atty.-Gen. v. Ry. Co.*, 36 Wis. 466.

Action may be brought under above section to vacate charter of a street railway, when. *Atty.-Gen. v. Ry. Co.*, 72 Wis. 612; s. c., 40 N. W. Rep. 487.

§ 3242. Whenever the attorney-general shall have reason to believe that any of the acts or omissions specified in the preceding section can be established by proof, he shall apply for leave, and upon leave granted, bring such action in every case of public interest, and in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby. In case the attorney-general on application shall refuse to bring such action, leave to bring the same by a private party shall be granted only on notice to the attorney-general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the State to indemnify it and the defendant against all taxable costs therein.

Judgment of forfeiture; distribution; costs, etc.—Stats., §§ 3243–3250, 3601.

§ 3243. Upon an application by the attorney-general to bring any such action, the court may in its discretion direct notice of such application to be given to the officers of the corporation previous to the hearing, and may hear the corporation in opposition thereto.

§ 3244. Whenever an action shall be brought by the attorney-general in the name of the State for the purpose of vacating the charter or annulling the existence of a corporation, the summons shall be served personally upon some officer of such corporation, if to be found within the State. If any sheriff to whom any such summons shall be delivered for service, shall make return thereon that no officer of such corporation can after due diligence be found within the State, the attorney-general shall cause a copy of such summons to be published in the official State paper once in each week for four successive weeks; and upon filing proof of such publication with the clerk of the court, the service of the summons shall be deemed complete, and the court shall proceed as though personal service had been made on such corporation.

§ 3245. If in any such action it shall be adjudged that a corporation has forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be excluded from such corporate rights, privileges and franchises, and be dissolved; and thereupon the affairs of such corporation shall be wound up by and under the direction of a receiver, to be appointed by the court, and its property sold and converted into money; and the proceeds, after paying the costs and expenses, shall be distributed in the following order:

1. For the payment of taxes and debts due the United States, the State of Wisconsin, and any county, city, town or village therein.

2. For the payment of the legal and equitable liens upon the property of such corporation, in the order of their priority.

3. For the payment of the other just debts of the corporation.

4. The residue of such moneys, if any, shall be distributed among the stockholders thereof.

When any corporation shall be adjudged to have exercised a franchise or privilege not conferred on it by law, the court may, in its discretion instead of rendering a judgment as above provided in this section, render a judgment that such corporation be excluded from exercising such franchise or privilege and that the plaintiff recover costs, and may also in either case in its discretion fine such corporation in a sum not exceeding two thousand dollars, to be collected and paid into the State treasury.

§ 3246. If such action be pending in the circuit court, such receiver shall be appointed in and by the judgment of dissolu-

tion, or by subsequent order founded thereon. If it shall be pending in the supreme court, then, upon the entry of such judgment of dissolution, the attorney-general shall forthwith commence an action in the proper circuit court for the appointment of such receiver and the winding up of the affairs of such corporation; and such corporation shall, notwithstanding such judgment of dissolution, be deemed to exist until a receiver shall be appointed, qualified and duly invested with the property of such corporation, but shall not be able to do any act or thing other than to make over and transfer its assets to such receiver.

Appointment of receiver. § 2787, and note.

§ 3247. The provisions of the two preceding sections, so far as they relate to the distribution of the property of the corporation and actions to appoint receivers therefor, shall apply to any corporation whose charter shall be repealed by act of the legislature, or otherwise annulled thereby.

§ 3248. The necessary costs and disbursements, incurred in bringing and prosecuting such action by the attorney-general, in the name of the State shall, when certified to by him, be audited by the secretary of State, and paid out of the State treasury. The receiver in any such action, or the attorney-general in case such moneys shall be delivered to him, by such receiver, shall repay to the State treasurer any moneys advanced by the State on account of such costs and disbursements.

§ 3249. Upon the rendition of such judgment against a corporation, or for vacating or annulling of letters patent, the attorney-general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State.

§ 3250. No special directions in these statutes to the attorney-general or any other public officer, concerning corporations, not contained in this chapter, shall be deemed exclusive nor shall anything in this chapter be deemed to repeal any other remedies given by these statutes to or against corporations, their officers, stockholders or creditors.

TITLE XXVIII. CIVIL CASES IN COURTS OF JUSTICES OF THE PEACE.

CHAPTER CLV.

Of the Commencement of Actions.

Sec. 3601. Service on corporations.

§ 3601. Actions in justice's court against municipal or other corporation shall be commenced by summons, except where otherwise provided by law, which shall be served by leaving a copy thereof with any officer

Actions; evidence and limitation — Stats., §§ 4181, 4181a, 4199, 4252, 4435.

or officers, agent or person, upon whom the summons in an action commenced in the circuit court against such corporation, is required by law to be served, at least six days before the return day thereof, except that in an action against a railroad or express corporation, in addition to the officers above referred to, it may be served upon any agent of the corporation who has charge of an express office, or a depot or station on the line of the railroad, owned or occupied by the defendant; and upon perfecting such service, and a legal return thereof being made, it shall be held to have the same effect as a personal service upon a natural person, and like proceedings may be had in such action as in cases against such persons.

Service of summons on corporations. § 2637.

[Provisions of this chapter regulate service of summons in actions in justice's court against corporations. *F. L. & T. Co. v. Warring*, 20 Wis. 290. Summons against railroad company may be served on any station agent as well in a suit on contract for labor and services as any other. *Ruthe v. R. R. Co.*, 37 Wis. 344.]

TITLE XXX. PROCEEDINGS IN ALL COURTS.

Chap. 176. Of evidence.

177. Of limitations of time for commencement of actions.

CHAPTER CLXXVI.

Of Evidence.

Sec. 4181. Charters, patents, etc., as evidence.
4181a. Proof of posting or service of notice.
4199. Existence of corporation presumed.

§ 4181. Any charter or patent of incorporation which shall have been issued by the governor or secretary of State, or both, to any corporation, under any law of the State; any certificate of organization or association of any corporation, or joint-stock company; the articles of association or organization of any corporation, or a certified copy thereof, which shall have been filed or recorded in the office of the secretary of State, or of any register of deeds or clerk of the circuit court, under any law of the State; any certificate or resolution for the purpose of amendment, and every amendment in any form, of the charter, patent, certificate or articles of association or organization, or of the name, corporate powers or purposes of any corporation, filed or recorded, in either of said offices; and a duly certified copy of any such document so filed or recorded, shall be received as conclusive evidence of the existence of the corporation or joint-stock company, mentioned therein, or of the due amendment of the charter, patent, certificate or articles of association or organization thereof, in all cases where such facts are only collaterally involved; and as

presumptive evidence thereof, and of the facts therein stated, in all other cases.

§ 4181a. 1. Whenever by law or by the articles of organization or by-laws of any corporation any notice is required or authorized to be given, posted or served, an affidavit of the person or officer giving, posting or serving such notice specifying the manner and time thereof, annexed to a copy of such notice, may be filed with the clerk or secretary of any such corporation, quasi corporation or municipality to whose affairs the giving, posting or serving of such notice relates; in case such notice be posted or served by a sheriff or his deputy, his return officially certified may be made, in lieu of the affidavit hereinbefore provided for.

2. The original affidavit so filed, pursuant to the preceding section, and copies thereof duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, and in every court or judicial proceeding of the facts contained in such affidavit.

§ 4199. In actions by or against any corporation it shall not be necessary to prove on the trial the existence of such corporation, unless the defendant by his answer, duly verified, shall have specifically denied that the plaintiff or defendant, as the case may be, is a corporation.

See § 1748 (2), and note.

[Corporate character must be specifically denied. *Mfg. Co. v. Morse*, 49 Wis. 368; s. c., 5 N. W. Rep. 815.]

CHAPTER CLXXVII.

Of Limitations of Actions.

Sec. 4252. What actions not affected.

§ 4252. This chapter shall not affect actions against directors or stockholders of a moneyed corporation or banking association, to recover a forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party, of the facts upon which the forfeiture attached, or the liability was created.

Liability of stockholders. §§ 1755, 1756, 1769.

Part IV. Crimes and the Punishment Thereof; Proceedings in Criminal Cases.

TITLE XXXII. CRIMES AND THE PUNISHMENTS THEREOF.

CHAPTER CLXXXII.

Of Offenses against Property.

Sec. 4435. Frauds by officers of corporations.
4436. False certificates of stock.

§ 4435. Any director, officer or manager of any body corporate or public company,

Frauds by officers; indictment — Stats., §§ 4436, 4734, 4735, 4971.

who shall as such receive or possess himself of any money or other property of such body corporate or public company, otherwise than in payment to him of a just debt or demand, or who shall, with intent to defraud, omit to make, or to cause to be made a full and true entry thereof, in the books or accounts of such body corporate or public company, or who shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings or securities, belonging to such body corporate or public company, or shall make or concur in making any false entry, or any material omission in any book of records, accounts or other document of such body corporate or public company; or who shall make, circulate, or publish or concur in making, circulating or publishing any written or printed statement or account, which he shall know to be false in any particular, with intent to deceive or defraud any member, shareholder or creditor, of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to, or to enter into any security for the benefit of such body corporate or public company, and any person who shall receive any money, chattel or valuable security, which has been fraudulently obtained or disposed of as aforesaid, knowing the same to have been so fraudulently obtained or disposed of, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

§ 4436. Any president, cashier, treasurer, secretary or other officer, or any agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, or pledge, or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which, by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by resolution of the board of directors or trustees, or by some amendment thereof, shall be punished by imprisonment in the State prison, not more than ten years nor less than one year, or by fine not exceeding five thousand dollars.

See § 1751, and note.

TITLE XXXIII. PROCEEDINGS IN CRIMINAL CASES.

CHAPTER CXCIH.

Of Judgments in Criminal Cases and the Execution Thereof.

Sec. 4734. Service of indictment on corporation.
4735. Collection of judgment.

§ 4734. Whenever any corporation, private or municipal, shall have been indicted or informed against under the common law, or under any statute of this State, shall fail to appear after notice of such indictment or information, given and served by leaving a true copy of such indictment or information, with the officers or persons upon whom a summons in a civil action against such corporation may be served, and twenty days shall have elapsed thereafter, the default of such corporation may be recorded, and the charges in such indictment or information shall be taken as true, and judgment shall be rendered accordingly.

See § 1748 (2), cross-references.

§ 4735. Whenever judgment shall be rendered against any corporation by default, as aforesaid, or upon a verdict, the same shall be collected in the same manner as judgments in civil actions against like corporations.

Part V. The Construction of the Statutes.

CHAPTER CCIV.

Construction.

Sec. 4971. "Person" includes corporations.

§ 4971. In the construction of the statutes of this State, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature; that is to say:

12. The word "person" may extend and be applied to bodies politic, and corporate, as well as to individuals.

[There is no statute or rule of construction by which the term "bodies politic and corporate," or "corporations," or other like terms, must necessarily extend to individuals. *Tufts v. Schulenberg*, 41 Wis. 584.]

The words "any person" in statute providing punishment for bribery, include any corporation. *Chippewa, etc., Co. v. St. P.*, 75 Wis. 224; s. c., 44 N. W. Rep. 17.

A foreign corporation is a "person" within meaning of the statute of limitations. *Larson v. Aultman & Taylor Co.*, 86 Wis. 281; s. c., 56 N. W. Rep. 915.]

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1889.

1. Relating to the sealing of written instruments.
2. Relating to the acknowledgment of written instruments.
3. To prohibit conspiracy by employers against employes.
4. To provide for collection of special assessments upon corporate property.
5. To prohibit trusts and combinations.

Act 1.

AN ACT to establish a law uniform with the laws of other States relating to the sealing of deeds and other written instruments.

The People of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. In addition to the mode in which such instruments may now be executed in this State, hereafter all deeds and other instruments in writing executed by any person or by any private corporation, not having a corporate seal, and now required to be under seal, shall be deemed in all respects to be sealed instruments, and shall be received in evidence as such: Provided, The word "seal" or the letters "L. S." are added in the place where the seal should be affixed.

§ 2. A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under any seal, shall be deemed to have been executed under the corporate seal.

§ 3. All laws or parts of laws contravening the provisions of this act are hereby repealed.

§ 4. This act shall take effect and be in force from and after its passage and publication.

(Approved April 3, 1895.)

Act 2.

AN ACT to establish a law uniform with the laws of other States relating to the acknowledgment of written instruments.

The People of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Either the forms of acknowledgment now in use in this State, or the fol-

lowing, may be used in the case of conveyances or other written instruments, whenever such acknowledgment is required or authorized by law for any purpose:

(Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.)

* * * * *

3. In the case of corporations or joint-stock associations:

On this day of 18.., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words "and that said corporation (or association) has no corporate seal.") (In all cases add signature and title of the officer taking the acknowledgment.)

* * * * *

§ 3. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this State and within any other State, territory or district of the United States, may be made before any other officer of such State, territory or district authorized by the laws thereof to take the proof and acknowledgment of deeds, and when so taken and certified as herein provided, shall be entitled to be recorded in this State, and may be read in evidence in the same manner and with like effects as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments, and whose authority so to do is not intended to be hereby affected. * * *

(Approved April 3, 1895.)

Execution of conveyances by corporations.
§ 2216.

Conspiracies against employes; collection of tax — Acts, April 13, 1895; March 27, 1897.

Act 3.

AN ACT to prohibit conspiracy between employers or corporations to prevent persons from obtaining employment.

The People of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Chapter 349 of the laws of 1887, relating to blacklisting employes, is hereby amended so as to read as follows: It shall be unlawful for any two or more employers of labor, whether it be person, partnership, company or corporation, to combine or agree to combine, for the purpose of preventing any person or persons seeking employment from obtaining the same, or for the purpose of procuring and causing the discharge of any employe or employes, either by threats, promises, or by circulating blacklists, or causing the same to be circulated.

§ 2. If any person, partnership, company or corporation, after having discharged any employe from his or its service, shall prevent or attempt to prevent such discharged employe from obtaining employment with any other person, partnership, company or corporation, either by threats, promises, or by blacklisting such discharged employe, and circulating said blacklist, such person, partnership, company or corporation, shall be deemed guilty of a misdemeanor.

§ 3. If any person, partnership, company or corporation shall authorize, permit or allow any of its or their agents to blacklist any discharged employe or employes, or any employe or employes who may have voluntarily left the service of such person, partnership, company or corporation, and to circulate the same, to prevent such employe or employes from obtaining employment from any other person, partnership, company or corporation, such person, partnership, company or corporation shall be deemed guilty of a misdemeanor.

§ 4. Any person, partnership, company or corporation who shall hereafter coerce or compel any person or persons to enter into an agreement not to join or become a member of any labor organization as a condition of such person or persons securing employment, or continuing in the employment of any such person, partnership, company or corporation, shall be deemed guilty of a misdemeanor.

§ 5. Any person, partnership, company or corporation violating any of the provisions of the preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars; and all fines so collected shall be paid into the treasury of the State of Wisconsin for the use of the common school fund.

§ 6. Nothing in this act shall be construed as prohibiting any person, partnership, company or corporation from giving any other person, company or corporation to whom such discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, when requested so to do by such employe or person to whom he has applied for employment, or by such bondsman or surety, but it shall be unlawful to give such information with the intent to blacklist, hinder or prevent such employe from obtaining employment; nor shall anything in this act be construed as prohibiting any person, partnership, company or corporation from keeping for his or its own information and protection a record showing the habits, character and competency of his or its employes, and the cause of the discharge or voluntarily quitting of any employe of such employer.

§ 7. All acts or parts of acts contravening or inconsistent with the provisions of this act, are hereby repealed.

§ 8. This act shall take effect and be in force from and after its passage and publication.

(Approved April 13, 1895.)

See Act 5.

Act 4.

AN ACT to provide for the collection of special assessments upon the property of corporations.

The People of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Whenever in any city in this State, under the charter provisions thereof, or under any general law of this State, a special assessment against property subject to such special assessment shall have been duly ordered and made, and any such property shall be owned or operated by any corporation, organized under general or special laws of this State, or under franchises granted to it by any municipal corporation of this State, a certified statement of the amount of such assessment and the time when ordered may be signed by the city clerk and certified by him under the seal of the city as having been duly and legally made, and upon the filing of such certificate in the office of the clerk of the circuit court of the county in which such property is located, the same shall be a lien upon the property of any such corporation in such county and may be foreclosed by action in such court in the same manner as liens of mechanics and others upon real property may be foreclosed in such court.

§ 2. The certified statement of such lien so filed by the city clerk and signed and sealed as aforesaid, shall be prima facie evidence of the legality and correctness of

all prior proceedings in the matter of such assessments and of the legality and validity of such assessment.

§ 3. This act shall take effect and be in force from and after its passage and publication.

(Approved March 27, 1897.)

Act 5.

AN ACT to prevent corporations organized under the laws of this State from entering into any combination, conspiracy, trust, agreement or contract, intended to operate in restraint of any lawful trade or commerce carried on in this State.

The People of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Corporations organized under the laws of this State are prohibited from entering into any combination, conspiracy, trust, pool, agreement or contract, intended to restrain or prevent competition in the supply or price of any article or commodity in the general use of this State, or constituting a subject of trade or commerce therein, or to control the price of any such article or commodity, to regulate or fix the price thereof, to limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this State, or to fix any standard or figure by which its price to the public shall be in any manner controlled or established.

§ 2. Whenever the attorney-general of this State shall be notified, or shall have reason to believe that any corporation organized under the laws of this State has violated any provision of section 1, of this act, it shall be his duty forthwith to address to any such corporation, or to any director or officer thereof, such inquiries as he may deem necessary, for the purpose of determining whether or not such corporation has violated any provision of section 1, of this act, and it shall be the duty of such corporation, director or officer thereof, so addressed, to promptly and fully answer in writing, under oath, such inquiries, and in case such corporation, or director or officer thereof, shall fail or neglect so to do within sixty days from the receipt of such

inquiries, unless such time is extended in writing by the attorney-general, it shall be the duty of the attorney-general to proceed against such corporation as hereinafter provided.

§ 3. In case of the failure or neglect of any corporation organized under the laws of this State, or of any director or officer of such corporation, to answer such inquiries as hereinbefore provided, such failure or neglect is hereby declared to be a forfeiture of the charter of such corporation, and it is hereby made the duty of the attorney-general, on leave granted by the supreme court of this State, upon cause shown, to bring an action for the purpose of vacating the charter and annulling the existence of such corporation.

§ 4. No person shall be excused from answering any of the inquiries herein provided for, nor excused from attending and testifying, nor from producing any books, papers, contracts, agreements or documents, in obedience to a subpoena issued by any lawful authority in case or proceeding, based upon or growing out of any alleged violation of any of the provisions of this chapter, or of any law of this State in regard to trusts, monopolies or illegal combinations, on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him, may tend to criminate him, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence, documentary or otherwise, in obedience to any request under this chapter, or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled, as hereinbefore provided; and except further, that no person testifying in any case or proceeding aforesaid, shall be exempt from prosecution and punishment for perjury committed in so testifying.

§ 5. This act shall take effect and be in force from and after its passage and publication.

(Approved April 27, 1897.)

See Act 3.

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WYOMING.

CONSTITUTION OF WYOMING—1889.

ARTICLE I.

Declaration of Rights.

- Sec. 32. Private property shall not be taken for private use.
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35. No ex post facto law or other law impairing the obligation of contracts.

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- Sec. 27. The legislature not to pass local or special law in the following enumerated cases.
38. Investment of trust funds, etc.
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Corporations.

- Sec. 1. Laws relating to corporations may be altered.
2. All powers and franchises of corporations derived from the people.
3. What charters and franchises are to be invalid.
4. No law limiting the amount of damages for the injury or death of anyone.
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6. No corporation may engage in more than one general line of business.
7. Common carriers, definition of.
8. Competing corporations may not consolidate for the purpose of controlling prices, etc.
9. The right of eminent domain.
10. Co-operative associations.

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- Sec. 1. Eight hours a day's work.

Boards of Arbitration.

- Sec. 1. Legislature shall establish courts of arbitration.

Police Powers.

- Sec. 1. Armed bodies or detective agencies not to be brought into the State.

Labor Contracts.

- Sec. 1. Release of liability for personal injury prohibited.

Arbitration.

- Sec. 1. Legislature may provide for voluntary arbitration.

ARTICLE I.

Declaration of Rights.

§ 32. Private property shall not be taken for private use unless by consent of owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, nor in any case without due compensation.

See art. I, § 33, and cross-references.

§ 33. Private property shall not be taken or damaged for public or private use without just compensation.

Right of eminent domain. Art. X, § 9. Right of way of ditch company. § 533. Of road, railroad, telegraph or fluming company. § 548.

§ 35. No ex post facto law, nor any law impairing the obligation of contracts, shall ever be made.

Liability of corporation. Art. III, § 40. Laws relating to, may be altered. Art. X, § 1. Power of taxation. Art. XV, § 14. Legislature may amend or repeal. § 518.

ARTICLE III.

Legislative Department.

§ 27. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * for chartering or licensing ferries or bridges or toll roads; chartering banks, in-

surance companies and loan and trust companies; remitting fines, penalties or forfeitures; * * * granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; * * * relinquishing or extinguishing, in whole or part, the indebtedness, liabilities or obligation of any corporation or person to this State, or to any municipal corporation therein; exempting property from taxation; * * * in all other cases where a general law can be made applicable no special law shall be enacted.

Obligation of contracts not to be impaired. Art. I, § 35. Creation of corporation. § 501. Ditch company. § 532.

§ 38. No act of the legislature shall authorize the investment of trust funds by executors, administrators, guardians or trustees, in the bonds or stock of any private corporation.

Executors holding stock not liable. § 516. Executors to vote stock. § 517.

§ 39. The legislature shall have no power to pass any law authorizing the State or any county in the State to contract any debt or obligation in the construction of any railroad, or give or loan its credit to or in aid of the construction of the same.

State not to loan its credit. Art. XVI, § 6.

§ 40. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislature; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

See art. I, § 35, and cross-references.

ARTICLE X. Corporations.

Section 1. The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States.

Obligation of contracts not to be impaired. Art. I, § 35. Liability of corporation. Art. III, § 40. Power of taxation. Art. XV, § 14. Laws relating to, may be amended. § 518.

§ 2. All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals.

See art. X, § 1, and cross-references.

§ 3. All existing charters, franchises, special or exclusive privileges under which an actual and bona fide organization shall not have taken place for the purpose for which formed and which shall not have been maintained in good faith to the time of the adoption of this Constitution shall thereafter have no validity.

§ 4. No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waiving any right to recover damages for causing the death or injury of any employee shall be void.

Labor contracts, art. XIX, § 1, at p. 7.

§ 5. No corporation organized under the laws of Wyoming Territory or any other jurisdiction than this State, shall be permitted to transact business in this State until it shall have accepted the Constitution of this State and filed such acceptance in accordance with the laws thereof.

Act providing for acceptance of Constitution by corporation. Laws of 1891, at p. 27. Foreign corporation. § 600.

§ 6. No corporation shall have power to engage in more than one general line or department of business, which line of business shall be distinctly specified in its charter of incorporation.

General powers of corporations. § 543.

§ 7. All corporations engaged in the transportation of persons, property, mineral oils, and mineral products, news or intelligence, including railroads, telegraphs, express companies, pipe lines and telephones, are declared to be common carriers.

§ 8. There shall be no consolidation or combination of corporations of any kinds whatever to prevent competition, to control or influence productions or prices thereof, or in any manner to interfere with the public good and general welfare.

General powers of corporations. § 543.

Taxation; public indebtedness; labor — Const., Art. xv, § 14; Art. xvi, § 6; Art. xix, § 1.

§ 9. The right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals.

See art. I, § 33, and cross-references.

§ 10. The legislature shall provide by suitable legislation for the organization of mutual and co-operative associations or corporations.

General laws. § 501.

ARTICLE XV.

Taxation and Revenue.

§ 14. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State or any county or other municipal corporation shall be a party.

Assessment of corporate stock, etc. § 3791. Act relating to taxation of domestic corporations. Laws of 1895, at p. 28.

ARTICLE XVI.

Public Indebtedness.

§ 6. Neither the State nor any county, city, township, town, school district, or any other political subdivision, shall loan or give its credit or make donations to or in aid of any individual association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation. The State shall not engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

State not to contract debts in construction of railroads. Art. III, § 39.

ARTICLE XIX.

Miscellaneous.

Concerning Labor.

Section 1. Eight (8) hours' actual work shall constitute a lawful day's work in all mines, and on all State and municipal works.

Boards of Arbitration.

Section 1. The legislature shall establish courts of arbitration, whose duty it shall be to hear, and determine all differences, and controversies between organizations or associations of laborers, and their employers, which shall be submitted to them in such manner as the legislature may provide.

Police Powers.

Section 1. No armed police force, or detective agency, or armed body, or unarmed body of men, shall ever be brought into this State, for the suppression of domestic violence, except upon the application of the legislature, or executive, when the legislature cannot be convened.

Labor Contracts.

Section 1. It shall be unlawful for any person, company or corporation, to require from its servants or employees as a condition of their employment, or otherwise, any contract or agreement, whereby such person, company or corporation shall be released or discharged from liability or responsibility, on account of personal injuries received by such servants or employees, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

General powers of corporation. § 543. No law limiting the amount of damages for injury or death of anyone. Art. X, § 4.

Arbitration.

Section 1. The legislature may provide by law for the voluntary submission of difference to arbitrators for determination, and said arbitrators shall have such powers and duties as may be prescribed by law, but they shall have no power to render judgment to be obligatory on parties, unless they voluntarily submit their matters of difference and agree to abide by the judgment of such arbitrators.

(The Revised Statutes of the Territory of Wyoming are still in force in the State of Wyoming so far as consistent with the Constitution and subsequent Legislation.)

REVISED STATUTES OF WYOMING—1887.

TITLE VII. CORPORATIONS.

- Ch. 1. Creation and regulation.
7. Foreign corporations.
11. Dissolution.

CHAPTER I.

Creation and Regulation.

- Sec. 501. Certificates of incorporation; filing and record thereof; powers of certain corporations.
502. Certificates as evidence; general corporate powers.
503. Places of carrying on business.
504. Principal place of business.
505. Trustees; annual election; notice of election; filling vacancies.
506. Failure to elect trustees at time designated.
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510. Transfer of stock; purchase by corporation.
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514. Recording of certificate of final payment of capital.
515. When dividends prohibited; liability of trustees.
516. Executors, etc., holding stock not liable.
517. Executors and guardians to vote stock.
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519. Capital stock may be increased or diminished.
520. Procedure in changing amount of capital stock.
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522. Stockholders' meeting to make change; certificate of proceedings.
523. Limitation on incurring debts; liability of trustees.
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526. Certificate of wagon road companies; rates of toll.
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532. Certificate of ditch company.
533. Right of way for ditch company.
534. Ditch company shall sell water.
535. Ditch to be kept in good condition.
536. Application for four preceding sections.
537. Certificate of flume company.
538. Certificate of bridge or ferry company.
539. Bridge or ferry to be kept in good order.
540. Toll rates to be posted.
541. Certificate of telegraph company.
542. Limitation of time for completion of corporate works.
543. General powers of corporation.
544. Limitation upon corporate powers.
545. Penalty for damaging corporate powers.
546. Issuing notes as money forbidden.
547. Companies organized under Dakota laws may re-incorporate.
548. Condemnation proceedings by railroad and other companies.

§ 501. (As amended February 20, 1895.) Any time hereafter any three or more persons who may desire to form a company, for the purpose of carrying on any kind of manufacturing, mining, chemical, merchandising or mechanical business, constructing wagon roads, railroads, telegraph lines, digging ditches, building flumes, running tunnels, dealing in real estate, or carrying on any branch of business designed to aid in the industrial or productive interests of the country, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, duplicate certificates in writing, in which shall be stated the corporate name of said company, and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed fifty years, the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of the said company for the first year, and the name of the town and county in which the operations of the said company shall be carried on, and shall file one of the said certificates in the office of the county clerk of each county wherein the business of the company is to be carried on, and one thereof in the office of the secretary of State. The county clerk shall record said certificate in a book kept by him in his office for that purpose: Provided, nevertheless, That any three or more persons who may desire to form a company, the object of which shall be to aid the industrial or productive interests of the country, but without any purpose of direct gain to itself, then, and in such case, such company shall not have a capital stock, and the certificate of its incorporation shall not contain any of the statements appertaining to capital stock as above required, or its division into shares,

Certificate of incorporation; trustees — R. S., §§ 502-505.

but in lieu thereof they shall state and show in such certificate that such company is not organized for direct gain, and has no capital stock; and the members and officers of such company shall be fixed and provided for by the by-laws of such company. Provided, further, That any such corporation shall have power to raise money for the purpose of carrying on and conducting the business of the corporation, and may adopt by-laws providing for and regulating the levying of assessment against the members of the company; and such company shall have the power and authority to enforce the payment of such assessments made by the company, by a suit at law, to be brought in the name of the company, against any member failing to pay his assessment at the time and in the manner provided by the by-laws of such company. And provided further, That any corporation organized under the provisions of this chapter shall have the power to change the number of the trustees of such company, such change to be made in the manner that is or may be by law provided for changing the amount of the capital stock of such company.

Fees for filing. Act 5, at p. 28.

Must be created by general laws. Const., art. III, § 27. All powers and franchises derived from people. Id., art. X, § 2. What charters are invalid. Id., § 3. May not engage in more than one general business. Id., § 6. Co-operative associations. Id., § 10. Acceptance of Constitution. Id., § 6.

§ 502. When the certificate shall have been filed as aforesaid, with the secretary of the territory, he shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of the territory, under the great seal of the territory of Wyoming, shall be evidence of the existence of such company; and the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate, in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory, and they and their successors may have a common seal, and may make or alter the same at pleasure, and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation or otherwise, and holding or conveying by deed or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

Fees for filing. Act 5, at p. .

Certified copy as evidence. § 511. General powers of corporation. § 543. Limitation of corporate powers. § 544. Certificate of foreign corporations.

§ 600. Dissolution. §§ 647 et seq. Certificate of ditch company. § 532. Of flume company. § 537. Of bridge and ferry company. § 538. Of telegraph company. § 541. Certificate shall state what. § 504. Issuing notes as money forbidden. § 546.

[On the trial of an indictment for embezzlement from a domestic corporation, the existence of the corporation may be shown by parol evidence as to the county in which its business was conducted and the original certificate filed with the clerk of such county, under Revised Statutes, sections 501, 502. *Edelhoff v. State*, 36 Pac. Rep. 627.]

§ 503. Any certificate hereafter filed and recorded under the provisions of this chapter, may designate one or more places where the company may carry on its business.

Filing of certificate. § 501. See also § 502, and cross-references.

§ 504. If any company shall be formed under this chapter for the purpose of carrying on any part of its business in any place outside of this territory, the certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company, within this territory, is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business, within the meaning and provisions of this chapter.

See § 502, and cross-references. Actions brought, when. §§ 2415 et seq.

§ 505. The stock, property and concerns of such company shall be managed by not less than three, nor more than nine trustees, who shall respectively be stockholders in said company, and who shall (except the first year) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half the stock is represented; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation or otherwise, it shall be filled

Election of trustees; officers; subscriptions; by-laws, etc.—R. S., §§ 506-512.

for the remainder of the year, in such manner as shall be provided by the by-laws of the said company.

Failure to elect trustees. § 506. Corporate officers. § 507. Assessments on capital stock. § 508. By-laws. § 509. Liability of stockholders. § 512. See also §§ 513 et seq. Liability of, in case of failure. § 601. Dissolution. §§ 647 et seq. Duties and powers of, *in quo warranto*. § 3114.

§ 506. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

See § 505, and cross-references.

§ 507. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company, by its by-laws, may require.

See § 505, and cross-references.

§ 508. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such time, and in such payments or installments as the trustees shall deem proper, not to exceed ten per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand, or notice requiring such payments, shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

Assessments to be paid in installments. § 512.

§ 509. The stockholders of such corporation, or the trustees, if the certificate of incorporation so provide, shall have power to make by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this territory, and prescribing the duties of officers,

artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

Failure to elect trustees as designated by by-laws. § 506. Members and officers provided for by by-laws. § 501. Time and place of election prescribed by. § 505. Manner of transfer of stock prescribed by. § 510. May prescribe manner of transfer of. § 543.

§ 510. The stock of such company shall be deemed personal property, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; Provided, Such by-laws be just, reasonable and not in conflict with law; and it shall not be lawful for such company to use any of its funds in the purchase of any stock in any other company, nor in its own; Provided, however, Such company may in its discretion purchase, hold and own any stock, and to any amount, in any other company that is or may be subsidiary or tributary to, and that does contribute to the objects and purposes of the first company in this proviso mentioned.

Power to regulate transfers. § 543, subd. 6. Signing false stock certificates. § 1053. Issuing of same. § 1054. Shares sold on execution like personal property. § 2775. Duty of officer who shall sell. § 2776.

§ 511. The copy of any certificate of incorporation filed and recorded in pursuance of this chapter, certified by the secretary of the territory, under the great seal of the territory of Wyoming, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

Evidence of existence of such company. § 502. Recording of certificate. § 514. Filing certificate of foreign corporation. § 600.

§ 512. All the stockholders of every company incorporated under the provisions of this chapter shall be severally, individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid assessments on capital stock held by them respectively, and to no other or further amount, for all debts and contracts made by such company, until the whole amount of assessments on capital stock, fixed and limited by the trustees shall be paid in, and the assessment on the capital stock as fixed and limited by the trustees shall all be paid in, ten per cent. thereof within one year, and the balance shall be payable in installments, as shall be required

Purchase of property; certificate of stock paid in; dividends, etc.—R. S., §§ 513-519.

by the trustees, who shall give six weeks' notice, by publication, of the time and place for the payment of the same.

Liability of corporation. Const., art. III, § 40. Assessments on capital stock. § 508. Recording certificate of final payment of capital. § 514. Executors holding stock not liable. § 516. Liability of stockholders of foreign corporation. § 601.

§ 513. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls, neither shall the holders thereof be liable to any further payments under the provisions of sections five hundred and eight and five hundred and twelve, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

Assessment on capital stock. § 508. Liability of stockholders. § 512. Capital stock may be increased. § 519. Procedure in. §§ 520 et seq.

§ 514. The president and a majority of the trustees, within thirty days after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the register of deeds of the county wherein the business of the said company is carried on.

Assessments on capital stock. § 508. Assessments to be paid in installments. § 512. Foreign corporation, filing of certificate. § 600.

§ 515. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office; Provided, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection, in writing, with the clerk or secretary of the company and with the register

of deeds within the county, they shall be exempt from the said liability.

See § 505.

§ 516. No person holding stock in any such company as executor, administrator, guardian or trustee, and no such person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Executors to vote. § 517. Investment of trust funds. Const., art. III, § 38.

§ 517. Every such executor, administrator, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

Annual election. § 505.

§ 518. The legislature may, at any time, alter, amend, or repeal this chapter, but such amendment or repeal shall not take away or impair any remedy given against, or in favor of, any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Obligation of contracts not to be impaired. Const., art. I, § 35. Liability of any corporation. Const., art. III, § 40. Laws relating to, may be altered. Const., art. X, § 1. Powers of corporation. § 543.

§ 519. (As amended February 13, 1890.) Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this chapter, may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation and may also extend its business to any other branch named in section five hundred and one and may also change its corporate name, subject to the provisions and liabilities of this chapter. But before any corporation shall be entitled

to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this chapter, by complying with the following provisions and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this chapter.

Procedure in changing amount of capital stock. §§ 520 et seq. May issue preferred stock. Act of 1888, at p. 27.

§ 520. (As amended February 13, 1890.) Whenever the owner or owners of a majority of the shares of the capital stock of any company shall desire to call a meeting of stockholders, for the purpose of enabling the company to avail itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock or for extending or changing its business, or changing its name, such owner or owners shall make application in writing to the president or other chief officer of the company for the time being, to call a meeting of the stockholders of the company, which application shall state the purpose or purposes for which such meeting is desired. It shall thereupon be the duty of the officer of the company to whom such application is made to publish a notice to be signed by him in a newspaper in the county wherein is situated the principal office of the company in this territory, if any shall be published therein, at least four successive weeks and to deposit a written or printed copy thereof in the post-office addressed to each stockholder at his usual place of residence, at least fifteen days previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital stock and the business to which the company would be extended or changed, and stating one or more names proposed for a change as the case may be and a vote of at least two-thirds of all the shares of the stock lawfully issued and outstanding shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business, or change of its name, as aforesaid, or to enable the company to avail itself of the provisions of this chapter.

§ 521. Whenever the president or other chief officer of a company shall receive an application as aforesaid, he shall file the

same with the secretary or other person having the custody of the stock-books of such company; and it shall be the duty of the person having the custody of such books immediately to furnish the president or other chief officer of the company for the time being with a list of the stockholders of the company, with the usual place of residence of each stockholder at the time such application is received for filing, and the notices by mail herein provided for shall be sent to the stockholders as shown by the books of the company at the time said application is received for filing by the secretary or other person having charge of the stock-books, and all subsequent holders and owners of any of the stock of such company shall be chargeable with notice of such application and the proceedings thereunder from the time the same is received by the secretary or other person, as aforesaid, for filing, without other notice than the notice by publication as aforesaid.

§ 522. (As amended February 13, 1890.) If at any time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock lawfully issued and outstanding by the corporation they shall organize by choosing one of the stockholders chairman of the meeting and also another stockholder for secretary and proceed to a vote of those present in person or by proxy, and if on canvassing the votes, it shall appear that a sufficient number of the votes have been given in favor of increasing or diminishing the amount of capital stock, of extending or changing the business or name of the corporation, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavits of the chairman and the secretary of said stockholders' meeting, and such certificates shall also be acknowledged by such chairman and secretary and filed and recorded as required by the first section of this chapter, and when so filed and recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate and business extended or changed or corporate name changed as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter as the case may be: Provided, That when only the corporate name is changed the said certificate may show compliance with the

Excessive indebtedness; statement, etc.; construction of railroads, etc.—R. S., §§ 523-526.

provisions of this chapter respecting the change of name and also state the original name and the new name; Provided, further, That such change of name shall not in any manner affect suits pending in which any such corporation shall be a party nor shall such change affect causes of action nor the liabilities, nor vested and accrued rights and privileges of such corporation nor the rights of persons in any particular, and upon the filing of any such certificate such corporation shall cause to be published in some newspaper in or nearest the county in which its principal office is located, a notice of such change of name or change of organization for four successive weeks.

Executors and guardians to vote stock. § 517. Capital stock may be increased. § 519. Corporation may not engage in more than one general line of business. Const., art. X, § 6. May issue preferred stock. See Laws of 1888, at p. 27. Procedure in calling meeting, etc. §§ 520, 521.

§ 523. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto, shall be personally and individually liable for such excess, to the creditors of such company.

Liability of trustees. § 515.

[Payment by corporation of interest on bonds issued by it shows that it received value for the bonds. *Frank v. Hicks*, 35 Pac. Rep. 475; *Cheyenne Land Co. v. Live Stock Co.*, Id.; *Same v. Bardgette*, Id.]

§ 524. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this chapter, shall present a written request to the treasurer thereof, that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer, within twenty days after such presentation, and shall, also, at the same time, place and keep on file in his office for six months thereafter, a copy of such statement, which shall, at all times, during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this chapter, he shall forfeit and pay to the person presenting said written request, the sum of fifty dollars, and

the further sum of ten dollars for every twenty-four hours thereafter, until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

§ 525. Any corporation or association of persons organized under this chapter, now or hereafter engaged in mining gold or silver bearing quartz rock, coal, lead, iron, copper, or other minerals, may construct or operate a railroad, tramway road or wagon road from their said mine or mines, to any point or points desired by them, and shall have the exclusive right of way to the line of their road over the unoccupied public domain for the space not exceeding one hundred feet on either side thereof, and also, the exclusive possession at the termini of their said road, and at such intermediate points as may be required, for depots, buildings, turn tables, water tanks, machine shops and other necessary appurtenances of a railroad, and said corporation or association of persons may file a survey or diagram of such line of road with the land claimed by them on either side thereof, and also the land claimed at the termini aforesaid, with the secretary of the territory, and it shall not be lawful for any person or persons to construct any road or erect any buildings or otherwise interfere with the possession of the land so indicated in the survey or diagram filed as aforesaid, and a certified copy of such survey under the seal of the territory shall be received in evidence in all courts of law or equity, within this territory.

§ 526. When any three or more persons shall associate to form a company for the purpose of constructing a wagon road under the provisions of this chapter, their certificate of incorporation, in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll gates, not to exceed one in every ten miles of road, and to collect toll thereat at the rates prescribed by the county commissioners, or the tribunal transacting county business, upon the application of such corporation, either at or before the time of commencing such road, or after completion thereof; Provided, That such rates of toll shall remain in force and may be collected from persons traveling such road for two years after the time of completing such road; and thereafter, at the expiration of every two years, the county commissioners or tribunal transacting county business in each county, through which such road passes, shall fix and regulate such rates of toll, but not at higher rates than those originally prescribed; And provided further, That nothing in this chapter shall be so construed as to authorize

Wagon-road companies; ditch companies — R. S., §§ 527-533.

any corporation formed under the provisions hereof, to locate their road, railroad, ditch or flume, or any part thereof, upon any toll road previously existing, nor upon any public highway, heretofore, and at the time of the organization of such corporation, used and traveled as such, except it may be necessary to cross such toll road or public highway; all such rates of toll shall be conspicuously posted at every gate upon such road.

§ 527. Whenever any corporation constituted or formed for the purpose of constructing a wagon road, according to the provisions of this chapter, shall have constructed one mile or more of the road by such corporation to be constructed, it shall be lawful for the county commissioners, or the tribunal transacting county business of the county in which the portion of the road so constructed shall lie, to prescribe the rate of toll to be charged and collected by such corporation upon the portion of the road so constructed; and thereafter, and as other portions of the road to be constructed by such corporation shall be completed, such county commissioners or tribunal transacting county business, shall prescribe rates of toll to be charged and collected upon other portions of the road so completed as aforesaid; and such corporation shall have power to erect toll gates, not exceeding one to every ten miles, and to collect tolls thereat, at the rates prescribed, as aforesaid, until such road be completed; Provided, Said road shall be completed within two years after such rates shall have been prescribed.

§ 528. Whenever any corporate body, organized under this chapter, shall have fully completed the wagon road to be by them constructed, and the county commissioners or tribunal transacting county business of the county in which the same shall be located, shall have prescribed the rates of toll to be charged and collected upon such road, such corporation shall be entitled to charge and collect toll at the rates so prescribed, for two years thence next ensuing; and at the expiration of the term of two years after such rates shall be prescribed, and biennially thereafter, during the existence of such corporation, the county commissioners or tribunal transacting county business, shall prescribe the rates of toll to be charged and collected on such road for the two years thence next ensuing.

§ 529. Whenever any wagon road constructed by any corporation organized under this chapter, shall be located in two or more counties, it shall be lawful for the county commissioners or tribunal transacting county business of the several counties into or through which such road shall pass, to prescribe the rates of toll to be charged and collected by such corporation, on the portions or parts of such road lying within the limits of such counties respectively.

§ 530. No company formed under this chapter shall demand and receive toll whenever said wagon road is not in reasonably good repair, and any person having paid toll on said road, who shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or any agent of the said company to appear before him to answer in said complaint, within not over five days from the date of said complaint; and if it be found that said road is in bad condition, or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and said justice shall issue his order that no toll be collected upon said road or any part thereof until it is put in good repair.

§ 531. Any person, after toll shall have been demanded by the regularly authorized toll collector, who may be found traveling upon said road and refusing to pay said toll, shall be subject to a fine of not less than five dollars nor more than ten dollars for such offense, the same to be collected before any justice of the peace in the county wherein such road is located.

§ 532. Whenever any three or more persons associate under the provisions of this chapter, to form a company for the purpose of constructing a ditch or ditches for the purpose of conveying water to any mines, mills, or lands to be used for mining, milling or irrigating of lands, they shall in their certificate, in addition to the matters required in section five hundred and one, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch or ditches, as near as may be, and the use to which said water is intended to be applied.

See Const., art. III, § 27. Right of corporations to take water. § 1358.

§ 533. Any ditch company formed under the provisions of this chapter shall have the right of way over the lines named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch or ditches; Provided, That the lines proposed shall not interfere with any other ditch whose rights are prior to those acquired under this chapter and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, millmen or others along the line of said stream, who may have a priority of right, and there shall be at all times left sufficient water in

said stream for the use of miners and agriculturists who may have a prior right to such water along said stream.

§ 534. Any company constructing a ditch or ditches under the provisions of this chapter shall furnish water to the class of persons using water in the way named in the certificate, as the way the water is designated to be used, whether miners, millmen or farmers, whenever they shall have water in their ditch or ditches unsold, and shall at all times give the preference to the use of the water in said ditch or ditches to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners, or the tribunal transacting county business, as soon as such ditch or ditches shall be completed and prepared to furnish water.

§ 535. Every ditch company organized under the provisions of this chapter shall be required to keep the banks of their ditch or ditches in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property located and held prior to the location of such ditch; and whenever it is necessary to convey any ditch over, or across, or above any lode or mining claim, the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch; Provided, That in all cases where the ditch has priority of right by location, the owners of such claim or property shall be compelled to protect themselves from any damages that might be created by said ditch, and the owner of such claim shall be liable for any damages resulting to said ditch by reason of the works or operations performed on such claim or property.

§ 536. The four preceding sections shall apply to all ditch companies already formed and incorporated under the laws of this territory.

§ 537. When any company shall organize under the provisions of this chapter to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in section five hundred and one, shall specify as follows: The place of beginning, the termini and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this chapter, said company shall have the right of way over the line proposed in such certificate for such flume; Provided, It does not conflict with the right of any farmer, flouing, ditching or other company.

§ 538. When any three or more persons shall associate under the provisions of this chapter to form a company for the purpose of constructing a bridge or establishing a

ferry over any of the streams of water in this territory, their certificate, in addition to the matters required in section five hundred and one, shall specify as follows: The place where said bridge or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream where the said bridge or ferry is to be built or established are owned by said company, or that they have obtained in writing, the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge or establish the said ferry as aforesaid.

§ 539. Any bridge built or established, under the provisions of this chapter, shall, at all times, be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or high water, and any bridge or ferry so built or established, shall, if destroyed by flood, fire or other causes, be rebuilt or established within a period of nine months from such destruction or the rights acquired under this chapter shall be forfeited and cease to exist.

§ 540. The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on the said bridge or ferry, a board, on which shall be written, painted or printed in a plain, legible manner, the rates of toll, which rates of toll shall have been prescribed by the county commissioners, or the tribunal transacting county business in said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this chapter, shall demand or receive tolls whenever said bridge or ferry is not in a good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section five hundred and thirty.

§ 541. Whenever any three or more persons associate under the provisions of this chapter, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments, necessary for the wires; Provided, that the same shall not incommode the public in the use of said roads or highways.

Corporate powers; transfer of stock — R. S., §§ 542-547.

§ 542. Any company formed under the provisions of this chapter for the purpose of constructing any road, ditch, flume, bridge, ferry or telegraph line shall, within six months from the date of their certificate, commence work on such road, ditch, flume, bridge, ferry or telegraph line, as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed; and the time of completion of any such road, bridge, ferry or telegraph line shall not be extended beyond a period of two years, and of any such flume beyond the period of four years from the time work was commenced as aforesaid; and any company failing to commence work within six months from the date of certificate, or failing to complete the same within the time above stated, shall forfeit their claim to that portion of the route upon which they have failed to do the specified work; Provided, That this section shall not apply to any ditch or flume for mining purposes constructed through any ground owned by the corporation.

§ 543. Every corporation under the provisions of this chapter, as such, has power:

First.—To have succession by its corporate name for the period limited in its certificate of charter;

Corporate name to be stated in certificate. § 501. Change of name. § 501. Dissolution. § 650. Expiration. § 655.

Second.—To sue and be sued, complain and defend in any court of law or equity;

Liability of stockholders. § 512. Of trustees. § 515. Evidence of corporate existence. § 502. Liability of officers of foreign corporation. § 601. Actions may be proceeded in corporate name after dissolution. § 650. Venue of actions against corporations. §§ 2411-2421. Service of summons upon. §§ 2431-2433. Same, in justice's court. §§ 2426, 2427. Verification of pleadings. § 2489. Execution. §§ 2772-2779. Attachment. § 2869. Quo warranto proceedings. §§ 3092 et seq. May sue its members. § 501.

[Statement by an agent of defendant company, made before the agency began and before defendant was organized, are inadmissible in an action on a contract made by the company. *Coal & Ice Co. v. Eastman*, 38 Pac. Rep. 680.]

Third.—To make and use a common seal, and alter the same at pleasure;

See § 502.

Fourth.—To hold, purchase and convey such real and personal estate as the purpose of the corporation may require;

See § 502.

[Payment by corporation of interest on bonds issued by it shows that it received value for the bonds. *Frank v. Hicks*, 35 Pac. Rep. 475; *Cheyenne Land Co. v. Live Stock Co.*, id.; *Same v. Bardgette*, id.]

Fifth.—To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation;

Officers, election of. § 507.

Sixth.—To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

See § 509. May increase its stock. § 519. And issue preferred stock. Act of 1888, at p. 27. § 510.

Transfer of Stock.

§ 544. The powers enumerated in the preceding section, shall vest in every corporation that shall hereafter be created, although they may not be specified in the certificate, or in the act under which it shall be incorporated, but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

§ 545. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, railroad, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company, which may be organized under the provisions of this chapter, upon conviction thereof, before any court of competent jurisdiction in the county where the offense shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, which shall be paid into the county treasury for the use of common schools, and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

Malicious mischief. § 1058.

§ 546. Nothing in this chapter shall be so construed as to authorize any company organized under the same, to issue notes or bills for circulation as money.

General corporate powers. §§ 502, 543.

§ 547. Any company organized under and by virtue of any act of the territory of Dakota, or any association of individuals acting as bodies corporate, may surrender their certificates or articles of association to the secretary of the territory, and become a body corporate and politic under the provisions of this chapter, by complying with all and singular the provisions thereof.

See § 501.

§ 548. Whenever any road, railroad, ditch, telegraph or fluming company, organized or to be organized under the provisions of this chapter, or any law of this territory, shall not have acquired by gift or purchase, any land, real estate, or claim required for the construction or maintenance of their road, railroad, ditch, telegraph or flume, or which may be affected by any operation connected with the construction or maintenance of the same, the said corporation may present to the district judge of the judicial district wherein such lands, real estate or claim shall be, a petition signed by the president, attorney or agent of the same, describing with convenient accuracy and certainty, by map or otherwise, the lands, real estate or claims so required to be taken or affected as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee or incumbrancer, as far as known to such president, attorney or agent, or appearing of record, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and persons interested, for the taking or injuriously affecting such lands, real estate or claims as aforesaid; the said district judge shall have satisfactory evidence that notice of an intended application and the time and place thereof, for the appointment of appraisers between said corporation and the owners and persons interested in such lands, real estate and claims, has been given at least ten days previously, to such owners personally, at their residence, or on the premises, or by publication thereof in a newspaper printed in the county in which such lands, real estate or claims shall lie, or if no newspaper is published in said county, then by posting three or more notices in some public places in the said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county, known to such president, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall have proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpoenas and compel witnesses to attend and testify, and may ad-

journal and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall hear the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taken or injuriously affected as aforesaid, making such deduction or allowance of real benefits or advantages which such owners or parties interested may derive from the construction of said road, railroad, ditch, telegraph or flume. They, or a majority of them, shall make, subscribe and file with the register of deeds of the county in which such real estate or lands shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described with convenient certainty and accuracy. The district judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, have been deposited to the credit of such parties, in the county treasury, or other place for that purpose approved by the court, shall make and cause to be entered in the minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the register of deeds' office of the proper county. In like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested, to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee, or shall have the exclusive right, title and possession of all such lands, real estate or claims described in said rule, as required to be taken, as aforesaid, during the continuance of the corporation and may take possession of and hold and use the same for the purposes of the said road, railroad, ditch, telegraph or flume, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate or rule of said district judge. If, at any time after an attempted or actual ascertainment of compensation under this chapter, or any purchase by, or donation to, said corporation, of lands or claims, for purchases aforesaid, it shall appear that the title acquired thereby, to all or any part of such lands for the use of said corporation, or if said assessment shall fail or be deemed defective, the said corporation may proceed and perfect such

title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings or of any proceeding under this chapter, the district judge may, by rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of, and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation, on account thereof; Provided, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained, and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day, as compensation for each day actually employed, such compensation to be taxed and allowed by the district judge. If any appraiser so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the district judge.

CHAPTER VII.

Foreign Corporations.

Sec. 600. Certificate of charter to be filed with secretary and register of deeds.

601. Liability of officers, etc., in case of failure.

602. Duties and fees of register; copies as evidence.

§ 600. Every incorporated company, incorporated under the laws of any foreign State or kingdom, or of any State or territory of the United States, beyond the limits of this territory (except insurance companies) and now or hereafter doing business within this territory, shall, within thirty days after commencing so to do business, file in the office of the secretary of this territory and also file in the office of the register of deeds of the county within which its business is conducted, a copy of its charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law, duly certified and authenticated by the proper authority of such foreign State, kingdom or territory; Provided, That every foreign corporation, that had, prior to the twelfth day of March, eighteen hundred and eighty-six, complied with the statutes of this territory regulating corporations and had prior to that time been doing business in this territory by virtue thereof, is hereby exempted from fil-

ing a copy of its charter of incorporation or certificate of incorporation, as the case may be, in the office of the secretary of the territory.

Foreign corporations must accept the Constitution of this State. Const., art. X, § 6. See §§ 601, 602.

§ 601. A failure to comply with the provisions of this chapter shall render each and every officer, agent and stockholder of any such corporation so failing therein, jointly and severally, personally liable on any and all contracts of such company, made or to be performed within this territory.

§ 602. The several certificates, statutes and charters mentioned in section six hundred, shall be by the register of deeds filed and preserved in his office, as a part of the records thereof; and he shall be entitled to receive a fee of one dollar for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by such register of deeds, under his seal of office, shall be received in all courts of this territory as sufficient evidence of the existence and corporate character of such incorporations, and of all their powers, duties and liabilities, and the originals thereof, may in like manner be used in evidence of these matters with like effect.

CHAPTER XI.

Dissolution.

Sec. 647. Duties and powers of trustees on dissolution.

648. Title to property to vest in trustees.

649. Dissolution shall not abate actions.

650. Action may be proceeded in corporate name after dissolution.

651. Certain liens not affected by dissolution.

652. How judgments against dissolved corporations satisfied.

653. Chancery jurisdiction on dissolution.

654. Procedure on dissolution of stockholders.

655. Notice of expiration by limitation.

656. Notice of dissolution of foreign corporations.

§ 647. Upon dissolution by expiration of its charter or otherwise, of any corporation now existing, or which hereafter may be formed, unless some other person or persons be appointed by the legislature or some court of competent jurisdiction, the board of trustees or directors of such corporation, or the managers of the corporate affairs, by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, to sue for and collect the debts and moneys due the corporation, or to compound and settle the same as they may deem best; to have, hold, reserve, sell and dispose of property, real

and personal, of every corporation dissolved, to adjust and pay all the debts of the corporation dissolved, to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount of stock of each stockholder paid up; all such trustees shall be jointly and severally liable to the creditors and stockholders of such corporation dissolved, to the extent of the property and effects which shall come into their hands and possession, or into the hands or possession of any of them.

Trustees, election of. § 505. Quo warranto. §§ 3092 et seq.

[A creditor of an insolvent corporation is entitled to a dividend only on what is actually due him, and has no right to an allowance on amount of negotiable bonds of the company representing no indebtedness, which he claims to hold as collateral security. *Intern. Trust Co. v. Union Cattle Co.*, 3 Wyo. 803; s. c., 31 Pac. Rep. 408; *Am. L. & T. Co. v. Same*, id.; *Fay v. Same*, id.]

§ 648. The title to all real and personal estate belonging to any such corporation, shall, immediately upon the dissolution thereof, unless by a decree of a court of competent jurisdiction, declaring such dissolution, it is otherwise ordered, pass to and rest in such trustees, directors or other managers, and an action at law may be maintained by such trustees or directors, or the survivors of them, in their own names, by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property, or of any damage done to the same, or for the recovery of any debts due to such corporation dissolved.

§ 649. No suit or action at law or in chancery whereto any corporation is or may be a party, shall abate by reason of the dissolution of such corporation by expiration of its charter of incorporation or otherwise; but the trustees or directors of such corporation, acting as trustees to the stockholders and creditors after the dissolution as herein provided, or the survivors of them, or the trustee or trustees, receiver or receivers, appointed by the decree of any court of competent jurisdiction, may prosecute or defend such suit or action in the name of the corporation dissolved, notwithstanding the dissolution.

§ 650. Any corporation dissolved may, notwithstanding such dissolution, prosecute an action at law in the corporate name, for the use of the person entitled to receive the proceeds of such suit, upon any cause of action accrued, or which, but for such dissolution, would have accrued to such corporation and in the same manner, and with like effect as if such corporation were not dissolved.

§ 651. The lien of a judgment or execution at law, or a decree of a court of equity, in favor of or against any corporation, shall not be dissolved or suspended by reason of the dissolution of such corporation, subsequent to the rendition of such judgment or the entry of such decree, or the issuing of such execution, but execution may be had thereof in the same manner as if such dissolution had not occurred.

§ 652. No execution shall issue upon judgments at law, rendered against any corporation, subsequent to the dissolution of such corporation, but the same, with the costs thereof, shall be paid by the trustee as other debts.

§ 653. Nothing in this chapter contained shall be construed to impair the jurisdiction of the court of chancery, to decree the dissolution of any corporation, or to appoint a receiver or receivers, trustee or trustees, to settle the affairs of any corporation dissolved by lapse of time or otherwise, and all trustees or managers of any corporation, acting as the trustees of the stockholders and creditors thereof, after the dissolution of the corporation, shall in all things be subject to the control of the court of chancery; may be required to give bond, with the security to be approved by the court, upon petition of any stockholder or creditor of the corporation dissolved, conditioned for the due discharge of their trust; may be required to account for the proceeds of the property and effects of the corporation, and for any failure to give such bond or render such account, or for any default or neglect of duty, they, or any of them, may be removed by the court, and a successor or successors appointed.

§ 654. Whenever the stockholders of any corporation formed under the laws of Wyoming Territory desire to dissolve the corporation, prior to the time limited by law, or by the terms of this article of incorporation, they may do so upon the vote of two-thirds of the entire stock of the corporation, at a meeting of the stockholders of said corporation which shall have been called for the stated purpose of considering a proposition to dissolve such corporation, and not until its debts shall have been fully paid, notice of such meeting to be given in the manner now or at the time provided by law for calling stockholders' meetings for the purpose of increasing or diminishing the capital stock of corporations, and when a dissolution has been so ordered, the president and secretary of such corporation shall make and sign notices of dissolution, one copy of which shall be filed in the office of the secretary of the territory, and one copy shall also be filed in the office of the county clerk in every county in which the articles of incorporation of such corporation were filed, and a copy of such notice shall be published in some newspapers printed in each of said

Embezzlement; false stock certificates; malicious mischief — R. S., §§ 910, 1053, 1054, 1058.

counties for the period of at least six weeks, and upon the filing and publication of such notices as aforesaid, such corporation shall be deemed to have been dissolved forever.

§ 655. Whenever any corporation formed under the laws of Wyoming Territory shall expire by limitation of law, or by the terms of its articles of incorporation, notices of such expiration shall be made and filed and publication made in the same manner as is hereinbefore required.

§ 656. Whenever any foreign corporation, which is doing business according to law in this territory, shall expire by limitation or otherwise, it shall be the duty of the agent or representative of such corporation to file and publish notices of such expiration, in the same manner as is hereinbefore provided.

TITLE X. CRIMES.

Ch. 3. Offenses against property.

8. Offenses by cheats, swindlers and others.
9. Malicious mischief.

CHAPTER III.

Offenses against Property.

Sec. 910. Embezzlement by officers.

§ 910. If any officer of public trust in this territory, whether elected or appointed, or any officer or director of any incorporated bank or private banking person or firm or of any incorporated company, embezzle or fraudulently convert to his own use bullion, money, bank notes or any security for money, or any effects or property of another person, which shall have come into his possession or been placed under his care or management by virtue of his office, place or employment, he shall be deemed guilty of grand larceny, if the value thereof be the sum of twenty-five dollars and be punished accordingly.

[See note to § 502.]

CHAPTER VIII.

Offenses by Cheats, Swindlers and Others.

Sec. 1053. Signing false stock certificates.

1054. Issuing false stock certificates.

§ 1053. Every president, cashier, treasurer, secretary or other officer and agent of any bank, railroad, manufacturing or other corporations, who shall wilfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold, or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the sign-

ing, issuing, selling or pledging of which such president, cashier, treasurer or other officer or agent shall not be authorized by the charter and by-laws of such corporation or by some amendment thereof, shall be adjudged guilty of felony, and any such person or persons shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars and by imprisonment in the penitentiary not more than ten years.

Transfer of stock. § 510. Power to regulate transfers. § 543, subd. 6. Duty of officer who shall levy execution. § 2776.

§ 1054. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employe of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent, or simulated certificate, or other evidence of ownership, or of any share or shares, of the capital stock of any bank, railroad, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning, or pledging or causing the same to be done, shall be adjudged guilty of felony and shall be liable to indictment, and, on conviction, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years.

See § 1053, and cross-references.

CHAPTER IX.

Malicious Mischief.

Sec. 1058. Injuring telephone and telegraph property.

§ 1058. Whoever unlawfully and intentionally injures, molests or destroys any building, line, wire, post, support, instrument, apparatus, materials or property of any company, owner or association used in transmitting intelligence by electricity through telephones or the like, shall forfeit to the use of said company, owner or association, treble the amount of damages, proved to have been sustained thereby. To be recovered in an action in the name of said company or association, and may further be punished by fine not less than twenty-five nor more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or both.

Appropriation of water; actions, where brought, etc.—R. S., §§ 1358, 2415-2419, 2421, 2431.

TITLE XIX. IRRIGATION.

CHAPTER II.

Appropriation of Water.

Sec. 1358. Rights of incorporated companies to take water.

§ 1358. It shall not be necessary for any corporation heretofore organized and now existing, or for any corporation hereafter organized, under the laws of this territory, which has heretofore, or shall have hereafter constructed, operated or maintained, any ditches, canals, flumes, tunnels, or reservoirs, or other appropriations of water, for the purpose of irrigation, mining, manufacturing, domestic uses, or for any beneficial purpose whatever, to incorporate as a ditch company, or companies, if the objects or purposes for which such corporation shall have been formed or incorporated, imply, permit or make necessary, or advantageous, such use or uses of water; and such corporation for all the purposes of this chapter shall have all the rights of a natural person as defined herein, and shall have its rights determined in the same manner; Provided, No priority of water right shall take from any city or town the water required for the use of the residents thereof.

TITLE XXXVIII. CIVIL PROCEDURE.

DIVISION 2. COMMENCEMENT OF ACTIONS; JURISDICTION; ISSUE.

- Ch. 5. Where actions to be brought.
6. Jurisdiction by summons, publication or appearance.
7. Pleadings.

DIVISION 5. ENFORCEMENT OF JUDGMENT.

- Ch. 1. Execution.

DIVISION 6. PROVISIONAL REMEDIES.

- Ch. 2. Attachment.

DIVISION 7. SPECIAL PROCEEDINGS.

- Ch. 11. Quo warranto.

DIVISION 2. COMMENCEMENT OF ACTIONS.

CHAPTER V.

Where Actions to be Brought.

- Sec. 2415. Actions against domestic corporations.
2416. Against stage and railroad companies.
2417. Against turnpike companies.
2418. Special charter provisions.
2419. Non-residents and foreign corporations.
2421. Change of venue; when corporations a party.

§ 2415. An action other than one of those mentioned in the first four sections of this chapter,* against a corporation created un-

der the laws of this territory, may be brought in the county in which such corporation is situate, or has had its principal office or place of business; but if such corporation is an insurance company the action may be brought in the county wherein the cause of action, or some part thereof, arose.

§ 2416. An action against the owner or lessee of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as carrier, and an action against a railroad company, may be brought in any county through or into which such road or line passes.

§ 2417. An action other than one of those mentioned in the first four sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies.

§ 2418. When the charter of a corporation created under the laws of this territory prescribes the place where a suit must be brought, that provision shall govern.

§ 2419. An action other than one of those mentioned in the first four sections of this chapter against a non-resident of this territory, or a foreign corporation, may be brought in any county in which there is property of, or debts owing to the defendant, or where such defendant is found, but if the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose.

§ 2421. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties.

CHAPTER VI.

Jurisdiction by Summons, Publication or Appearance.

Subdivision 1. Actual Service.

- Sec. 2431. Service upon a corporation.
2432. Service upon insurance companies.
2433. Service upon foreign corporations.

Subdivision 2. Constructive Service.

- Sec. 2435. Service by publication; when may be made.

§ 2431. A summons against a corporation may be served upon the president, mayor, chairman or president of the board of directors or trustees or other chief officer, or if its chief office be not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent, or if none of the afore-

*Actions relating to real property, specific performance and for recovery of fines, forfeitures, penalties, etc.

said officers can be found, by a copy left at the office or usual place of business of such corporation with the person having charge thereof; and if such corporation is a railroad company, whether foreign or created under the laws of this territory and whether the charter thereof prescribes the manner and place, or either, of service or process thereon, the summons may be served upon any regular ticket or freight agent thereof, or if there is no such agent, then upon any conductor in any county in this territory in which such railroad is located or through which it passes.

See § 2426.

§ 2432. When the defendant is an insurance company and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 2427.

§ 2433. When the defendant is a foreign corporation having a managing agent in this territory, the service may be upon such agent.

See § 2427.

§ 2435. (As amended February 16, 1895.) Service by publication may be had in either of the following cases:

Third. In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this State, or the defendant's place of residence is unknown, and in actions against a corporation incorporated under the laws of this State, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by section twenty-four hundred and thirty-one, and which has no place of doing business in this State.

CHAPTER VII.

Pleadings.

Sec. 2489. Pleadings must be subscribed and verified.

§ 2489. Every pleading and motion must be subscribed by the party or his attorney, and every pleading of fact, except as provided in the next section, must be verified by the affidavit of the party, his agent or attorney; when a corporation is the party the verification may be made by an officer thereof, its agent or attorney, * * *

DIVISION 5. ENFORCEMENT OF JUDGMENT.

CHAPTER I.

Execution.

- Sec. 2772. Shares of stock subject to levy.
 2773. Officer may demand statement of shares held by defendant.
 2774. Manner of making levy.
 2775. Sale of shares.
 2776. Certificate of sale; transfer on books of company.
 2777. Rights and privileges of purchasers.
 2778. Shares bound from time of levy.
 2779. Pledge of shares as collateral not affected by levy.

§ 2772. Rights and shares of stock in any incorporated companies owned or held by any defendant in execution or attachment, or by any person in trust for or to the use of any defendant in execution or attachment, may be levied upon under any execution or writ of attachment, and may be sold under any execution in the manner hereinafter provided.

§ 2773. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company or for whom or to whose use any shares or stock in any incorporated company are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary or chief clerk of such incorporated company, or if there be no such officers in the territory, then any other officer of such company or the resident manager or agent thereof, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company.

§ 2774. Any officer, upon obtaining information in the manner provided in the last section or otherwise, that a defendant in any execution or writ of attachment held by him owns or holds any right or shares in the stock of any incorporated company, or that such rights or shares are owned or held by any other person in trust for or to the use of such defendant, may make a levy of such execution or writ of attachment on such rights or shares by leaving a true copy of such writ with the president, secretary, cashier or chief clerk of such incorporated company, and if there be no such officer there, with some other officer of such incorporated company, or the resident manager or agent thereof, with a certificate of the officer making such levy, setting forth that he levies upon and takes in execution or attachment such rights or shares to satisfy such execution or attachment.

[Above section construed. Wyoming Fair Assn. v. Talbott, 3 Wyo. 244.]

Execution; attachment; quo warranto — R. S., §§ 2775-2779, 2869, 3092.

§ 2775. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon such rights or shares, the same shall be sold in like manner as personal property is by existing law provided to be sold, said sale to be made at the front door of the court house, in the county in which such levy is made.

§ 2776. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company under an execution to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration and conveying to the purchaser such rights and shares, and such officer shall also leave with the president, secretary, cashier or chief clerk, or if there be none, with any other officer of such incorporated company a true copy of such certificate; and thereupon it shall be the duty of the officer or clerk or other person having charge of the books of such incorporated company to make such entries in the books of such company as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchase of the same.

§ 2777. Every purchaser of rights or shares of any incorporated company, at any sale thereof, made by any officer, upon receiving a certificate of the sale thereof, as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company as the defendant in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company.

§ 2778. Rights and shares of stock in an incorporated company, levied upon under the provisions of this subdivision, shall be held and bound from the time of the levy made in the manner hereinbefore provided.

§ 2779. In all cases where the share or shares of the capital stock of any corporation shall have been pledged in good faith, or hypothecated as collateral security, to any loan or debt, and the certificate thereof shall have been delivered upon such pledge or debt, such share or shares shall not be liable to be taken on execution against the pledgor, except for the excess of value thereof over and above the sum for which the same may have been pledged, and the certificate thereof delivered.

DIVISION 6. PROVISIONAL REMEDIES.

CHAPTER II.

Attachment.

Sec. 2869. Causes of attachment in civil actions.

§ 2869. In a civil action for the recovery of money the plaintiff may, at or after the commencement thereof, have an attachment against the property of the defendant upon the grounds herein stated:

First. When the defendant, or one of the several defendants, is a foreign corporation or a non-resident of this territory, or is about to become a non-resident; or, * * *

But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this territory, for any claim other than a debt or demand arising upon contract, judgment or decree, or for causing death by a negligent or wrongful act.

See § 3541.

DIVISION 7. SPECIAL PROCEEDINGS.

CHAPTER XI.

Quo Warranto.

- Sec. 3092. Action against person.
 3094. Commencement of action.
 3095. Upon whose relation action brought.
 3097. When an attorney may prosecute.
 3099. All claimants may be made defendants.
 3100. Place of bringing action.
 3101. Application to file petition; notice.
 3102. Issuance and service of summons.
 3103. Service by publication.
 3104. Pleadings after petition.
 3105. Extension of time for pleading.
 3106. Judgment in case of usurpation.
 3107. Judgment ousting trustee of corporation.
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 3112. Judgment against corporations.
 3113. Appointment of trustee when corporation dissolved.
 3114. Duties and powers of trustees.
 3115. Enforcement of delivery to trustees.
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 3117. Order directing transfer of books, etc.; enforcement.
 3118. Injunction in aid of proceedings against banking associations.
 3119. When security required of bank directors.
 3120. Directors may be enjoined from borrowing money.
 3121. Limitation upon time of bringing action.
 3122. Actions against officer of ousted corporation.
 3123. Provisions of this chapter are cumulative.
 3124. Disposition of fines.
 3125. Precedence of actions under this chapter.

§ 3092. A civil action may be brought in the name of the territory:

First.—Against a person who usurps, intrudes into, or unlawfully holds or exercises * * * a franchise within this territory, or an office in a corporation created by the authority of this territory;

Third.—Against an association of persons who act as a corporation within this territory, without being legally incorporated, or who fail to comply with the corporation laws of the territory.

§ 3093. A like action may be brought against a corporation.

First.—When it has offended against a provision of an act for its creation, or renewal, or any act altering or amending such acts:

Second.—When it has forfeited its privileges and franchises by non-user:

Third.—When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges and franchises:

Fourth.—When it has misused a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred.

§ 3094. The attorney-general, or a prosecuting attorney, when directed by the governor, supreme court, or legislative assembly, shall commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action.

§ 3095. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section three thousand and ninety-two, he may require security for costs, to be given as in other cases.

§ 3097. When the office of prosecuting attorney is vacant, or when the prosecuting attorney is absent, interested in the action or disabled from any cause, the court, or a judge thereof in vacation, may direct or permit any member of the bar to act in his place to bring and prosecute the action.

§ 3099. All persons who claim to be entitled to the same office or franchise, may be made defendants in the same action, to try their respective rights to such office or franchise.

§ 3100. An action under this chapter can be brought only in the supreme court, or in the district court of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situated, or has a place of business.

§ 3101. Upon application for leave to file a petition, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the journal, or the fact shall be indorsed by the judge on the petition, which shall then be filed.

§ 3102. When the petition is filed without leave and notice, a summons shall issue, and be served as in other cases; and such summons may be sent to and returned by the sheriff of any county by mail, who shall be

entitled to the same fees thereon as if it had been issued and returned in his own county.

§ 3103. When a summons is returned not served because the defendant, or its officers or office cannot be found within the county, the clerk shall publish for four consecutive weeks, in a newspaper published and of general circulation in the county, and if there is no such newspaper, then in a newspaper printed in this territory, and of general circulation in such county, a notice setting forth the filing and substance of the petition, and, upon proof of such publication, the default of the defendant may be entered and judgment rendered thereon, as if the defendant had been served with summons.

§ 3104. The defendant may demur, or file an answer, which may contain as many several defenses as he has, within thirty days after the filing of the petition, if it was filed on leave and notice, or after the return day of the summons; and the plaintiff may file a demurrer or a reply to such answer within thirty days thereafter.

§ 3105. An order may be made by the court, or a judge thereof, extending the time within which any pleading may be filed; but such order shall not work a continuance of the case.

§ 3106. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs.

§ 3107. When the action is against a trustee or director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election.

§ 3108. In a case named in the last section, the court may order a new election to be held, at a time and place and by judges appointed by the court, notice of which election, and naming the judges, shall be given for the time and in the manner provided by law for notice of elections of directors or trustees of such corporation; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary.

§ 3112. When in any such action it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges and franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded there-

from, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offenses or the exercise of such power.

§ 3113. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking payable to the Territory of Wyoming, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

§ 3114. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations and papers of every description within the custody, power or control of the officers of the corporation, or either of them, belonging to the corporation, or in anywise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders, to the extent of its property and effects which come into their hands.

§ 3115. An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

§ 3116. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors, trustees or other officers of the corporation, or against the person claiming to be a corporation.

§ 3117. In all actions under this chapter, when the judgment is against the defendant, the court may make an order directing the defendant forthwith to deliver over the books, papers, property, money, deeds, notes, bills and obligations to the persons entitled

thereto, or the trustees so appointed to receive the same, and may send a transcript of the proceedings, including a copy of such order, to the district court of the proper county, with a special mandate directing such court to carry the same into effect; and upon complaint being made, upon affidavit, to such district court, or a neglect or refusal to comply with such order, that court shall direct an attachment, returnable forthwith, to issue for the defendant, who may be required to answer under oath touching the premises; and if it appear that the defendant so neglects or refuses, such court shall render judgment of fine or imprisonment, or both, as the court making the order might have rendered.

§ 3118. Any stockholder or stockholders, owning not less than one-fourth of the capital stock of any banking association, actually paid in, or entitled to the beneficial interest therein, may have, pending proceedings in quo warranto against such corporation, an injunction restraining the directors or trustees thereof from making any disposition of the assets of such corporation prejudicial to the interests of such stockholder or stockholders, or inconsistent with their duties as directors or trustees.

§ 3119. The court, or judge thereof in vacation, may, upon satisfactory proof that the directors or trustees of such corporation have violated, or are about to violate, any of the franchises thereof, require them to give security to the stockholders thereof, to the satisfaction of the court or judge, for the proper discharge of their duties, and for the proper management and security of the assets, and such court or judge may enjoin such directors or trustees from paying out or issuing the notes of circulation of such bank, and from incurring any additional liabilities, except for the payment of the necessary services of the officers and employees of such banking association, the amount of which, while such proceedings are pending, shall be under the control of the court.

§ 3120. Such court or judge may, on petition, enjoin such directors or trustees from borrowing or issuing, either directly or indirectly, any of the money or assets of such bank, for their individual benefit while such proceedings are pending.

§ 3121. Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless the same shall be commenced within five years after the act complained of was done or committed; nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter which it has used and exercised for a term of twenty years; nor shall an action be brought against an officer to oust him from his office, unless within three years after the cause of such ouster, or the right to hold the office arose.

Actions in courts of justices of peace — R. S., §§ 3122-3125, 3426, 3427, 3541, 3542, 3544, 3791.

§ 3122. When judgment of forfeiture and ouster is rendered against a corporation because of any misconduct of the officers, trustees or directors thereof, a person injured thereby may, at any time within one year thereafter, in an action against such officers or directors, recover the damages he has sustained by reason of such misconduct.

§ 3123. Nothing in this chapter contained is intended to restrain any court from enforcing the performance of trusts for charitable purposes, at the relation of the prosecuting attorney of the proper county or from enforcing trusts, or restraining abuses, in other corporations, at the suit of a person injured.

§ 3124. All fines collected under the provisions of this chapter shall be paid into the treasury of the proper county, for the use of the common schools within the county.

§ 3125. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on motion of the attorney-general or prosecuting attorney, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

TITLE XLI. PROCEDURE IN COURTS OF JUSTICES OF THE PEACE.

CHAPTER II.

Procedure in Civil Cases.

Subdivision 1. Actions; how commenced.

Sec. 3426. Service on corporations.

3427. Service on insurance or foreign corporation.

Subdivision 2. Attachment and Garnishment.

Sec. 3541. Causes for attachment; affidavit.

3542. Undertaking required.

3544. What property may be attached.

§ 3426. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors, or trustees, or other chief officer; or if none of these shall be found in the county, upon the cashier, treasurer, secretary, clerk or agent; or if none of the aforesaid officers can be found, by a copy left at an office or usual place of business of such corporation with the person having charge thereof.

See § 2431.

§ 3427. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency, and when the defendant is a foreign corporation, having an agent in this territory, the service may be upon such agent.

See §§ 2432, 2433.

§ 3541. The plaintiff shall have a writ of attachment against the property of the defendant in a civil action before a justice of the peace at the time or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just; if the claim shall be founded upon contract, express or implied, the amount which the affiant believes the plaintiff ought to recover of the defendant, after allowing all just credits, counterclaims or set-offs, and the existence of some one or more of the following grounds of attachment:

First.—When the defendant is a foreign corporation, or a non-resident of this territory; or, * * *

See § 2869.

§ 3542. Before issuing the writ, the justice shall require a written undertaking on part of plaintiff, in a sum not less than fifty dollars in any case, and in double the amount claimed by the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment, the plaintiff will cover all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

§ 3544. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution.

TITLE XLIII. REVENUE, TERRITORIAL AND COUNTY.

CHAPTER I.

Mode of Raising Revenue.

Sec. 3791. Assessment of bank notes, corporate stock, credits, etc.

§ 3791. (As amended January 9, 1891.) The paid-in capital stock of all incorporated companies or associations doing business in this State, together with the accumulated surplus, not including real estate situated in any other State than this, shall be assessed to the company or association, issuing the same, and the persons holding the capital stock of such companies or associations shall not be assessed therefor. Credits shall be listed at such sum as the person listing them believed will be received or can be collected, and annuities, at the value which the person listing them believes them to be worth in money.

Power of taxation. Const., art. XV, § 14. Taxation of corporate stock and property. Act 4, at p. 28.

Preferred stock; acceptance of constitutions — Acts, March 2, 1888: Jan. 9, 1891.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1897.

1. Authorizing corporations to issue preferred stock.
2. To provide for the acceptance of the Constitution by corporations.
3. To protect employes nominated as candidates.
4. Relating to taxation of property and capital stock of domestic corporations.
5. Prescribing fees to be paid by corporations.

Act 1.

AN ACT authorizing certain corporations to issue preferred stock.

Be it enacted by the council and house of representatives of the Territory of Wyoming:

Section 1. Any corporation organized and existing by virtue of the laws of the Territory of Wyoming for the purpose of gain, shall be empowered, on the unanimous assent of the stockholders of such corporation to issue and dispose of preferred stock, and may stipulate that the holders of such stock shall be entitled to dividends not exceeding seven per centum per annum, in preference to all other stockholders; Provided, however, That if the earnings available for dividends on all the stock of such corporation shall be equal to or more than seven per cent., then in that case all of the stock of such corporation shall participate equally in the dividends. The assent of stockholders to the issuance and disposal of such preferred stock may be given at annual meetings of the stockholders, or any special meeting of such stockholders, notice having been given as provided in section five hundred and twenty of the Revised Statutes of Wyoming. A certificate of such action of the corporation shall be filed with the secretary of the territory, and a like certificate shall also be filed with the register of deeds of the county in which is located the principal place of business of such corporation.

§ 2. Any corporation hereafter organized in this territory may provide in its certificate of incorporation for the issuance and disposal of preferred stock of the kind and character above provided for, to an amount in such certificate stated.

§ 3. In case of the liquidation of any corporation organized or existing under the laws of Wyoming which shall have outstanding both common and preferred stock, the net assets of such corporation shall be distributed to all stockholders share and share alike.

§ 4. In every case where preferred stock is issued by any corporation, the holders

of the common stock shall have the first opportunity to purchase such preferred stock in proportion to their holdings of such common stock.

§ 5. This act shall take effect and be in force from and after its passage.
(Approved March 2, 1888.)

Capital stock may be increased. § 519.

Act 2.

AN ACT to provide for the acceptance of the Constitution of the State of Wyoming, by corporations.

Be it enacted by the legislature of the State of Wyoming:

Section 1. That no corporation organized under the laws of Wyoming Territory or any other jurisdiction than the State of Wyoming, shall be permitted to transact business in this State until it shall have accepted the Constitution of this State.

§ 2. Such acceptance shall be executed and acknowledged in all respects in the manner provided by the laws of Wyoming and the by-laws of the corporation so accepting the Constitution, for the execution of deeds.

§ 3. When duly executed, every acceptance of the Constitution, hereby required, shall be filed and recorded in the office of the secretary of State, of the State of Wyoming.

§ 4. It shall be the duty of the secretary of State upon the filing of any acceptance of the Constitution, to note on the margin of the record, of the certificate of incorporation of the corporation filing such acceptance, the fact that the same is filed; which notation shall also refer to the page and book wherein appears the record of such acceptance.

§ 5. Every acceptance of the Constitution of this State by any corporation, railroad or other company, heretofore executed and filed in the office of the secretary of State, which is signed by one or more of the principal officers of such corporation and has the corporate seal of such corporation affixed thereto, is hereby legalized and shall have the same force and effect in all respects as if the same had been executed and filed in conformity to the requirements of this act.

§ 6. This act shall take effect and be in force on and after its passage.
(Approved January 9, 1891.)

See Const., art. X, § 5.

Rights of employes; taxation; fees — Acts, Feb. 10, 1893; Feb. 18, 1895; Feb. 24, 1897.

Act 3.

AN ACT to protect employes of corporations, companies or individuals and other persons nominated as candidates, at any election, in their rights as citizens.

Be it enacted by the legislature of the State of Wyoming:

Section 1. Any company, corporation or individual, who shall discharge, or cause to leave his, her, or their employ, temporarily or permanently, any person or persons because they have been nominated as a candidate for any position of honor, trust or emolument, to be voted for at any election, held in pursuance of the laws of the State, shall be guilty of a misdemeanor, and shall be fined as provided in section 3, of this act.

§ 2. Any person, or agent, or officer, or any company, or corporation who shall cause, or attempt to cause, any person or persons nominated as candidates at any election, to withdraw, or refrain from accepting such nomination by threatening loss of employment, business or patronage, if they accept such candidacy, or shall make it a condition of employment, business or patronage, that such candidacy shall not be accepted, shall be guilty of a misdemeanor.

§ 3. Any person convicted under the provisions of this act shall be fined not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500).

§ 4. This act shall take effect and be in force from and after its passage.

(Approved February 10, 1893.)

Act 4.

AN ACT relating to the taxation of the property and capital stock of domestic corporations.

Be it enacted by the legislature of the State of Wyoming:

Section 1. The property of domestic corporations shall be returned, listed, assessed and taxed in the same manner as the property of individuals, but the capital stock of such corporations representing as it does simply the interests of the owners thereof in the property of such corporations shall not be taxed.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

(Approved February 18, 1895.)

Power of taxation never to be surrendered. Const., art. XV, § 14. Taxation of corporate stock and property. § 3791.

Act 5.

AN ACT prescribing fees to be paid by corporations.

Be it enacted by the legislature of the State of Wyoming:

Section 1. That from and after the passage of this act, all corporations, either domestic or foreign, organized for pecuniary gain under any of the provisions of title seven of the Revised Statutes of Wyoming, or any law amendatory thereto, shall pay the secretary of State upon filing with the said secretary its certificate of incorporation, as provided in said laws, the following fees, to-wit:

First. When the capital stock of said corporation shall not exceed five thousand dollars, the sum of five dollars.

Second. When the capital stock of said corporation shall be in excess of five thousand dollars, but not more than one hundred thousand dollars, the sum of ten dollars.

Third. When the capital stock of said corporation shall be in excess of one hundred thousand dollars, the sum of ten dollars and five cents additional for each one thousand dollars of capital stock in excess of one hundred thousand dollars.

§ 2. The fees herein prescribed shall be in full payment of all charges to be made by the secretary of State for filing and recording the articles of incorporation so presented to his office, and the proceeds of said fees shall be deposited with the State treasurer to the credit of the general fund.

§ 3. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

§ 4. This act shall be in effect from and after its passage.

(Approved February 24, A. D. 1897.)

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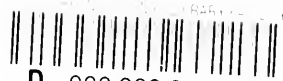
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